

**LAWS**  
*OF THE*  
**STATE OF DELAWARE**

*ONE HUNDRED AND THIRTY-EIGHT*  
*GENERAL ASSEMBLY*  
*FIRST SESSION COMMENCED AND HELD AT DOVER*

**On Tuesday, January 10, A.D.**  
**1995**

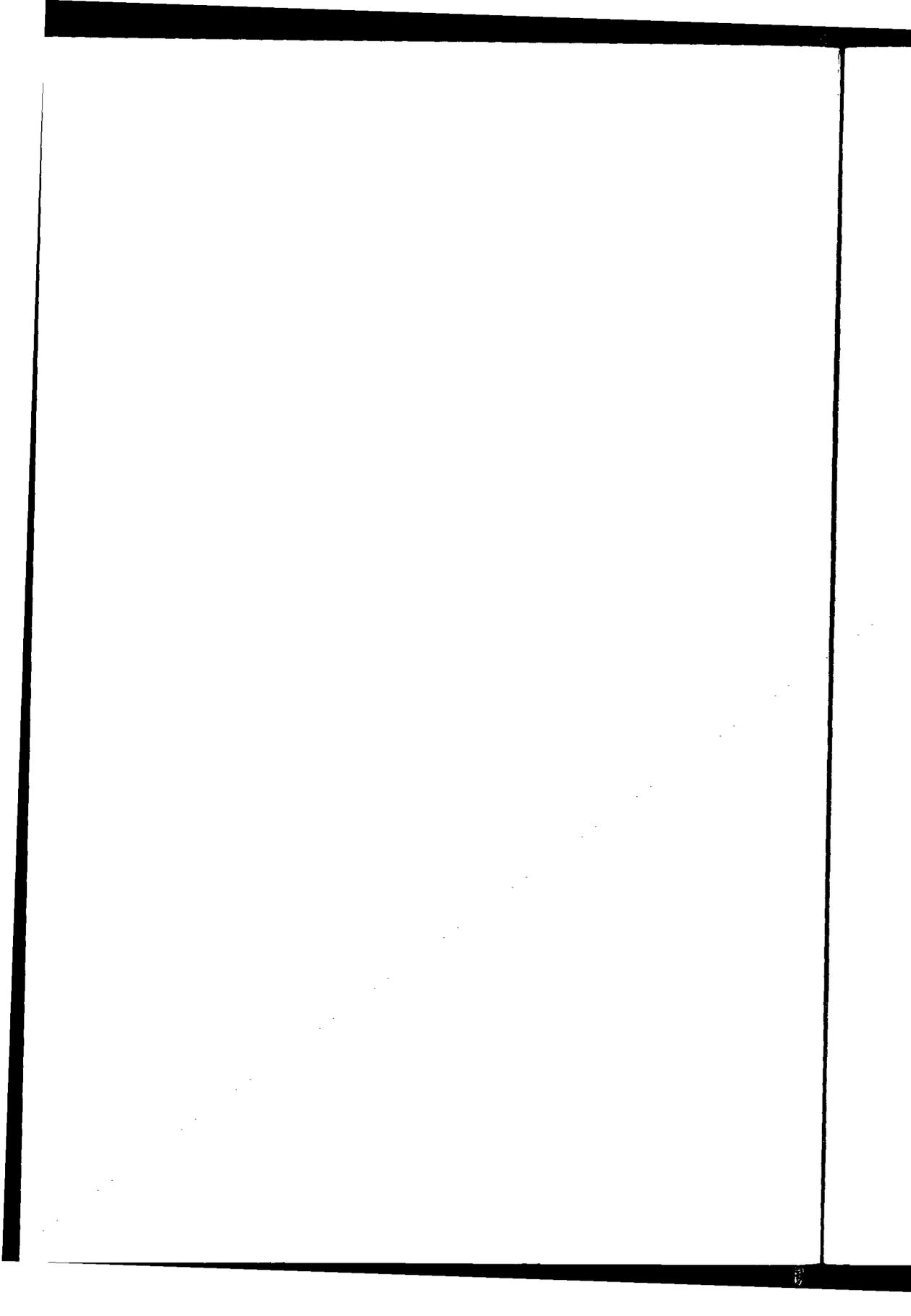
*SECOND SESSION COMMENCED AND HELD AT DOVER*

**On Tuesday, January 9, A.D.**  
**1996**

---

**VOLUME LXX**  
**Part II**

---



CHAPTER 342

FORMERLY

HOUSE BILL NO. 435  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 & 2 AND  
SENATE AMENDMENT NO. 2

AN ACT TO AMEND SUBCHAPTER IIIA OF CHAPTER 41, TITLE 21, DELAWARE  
CODE RELATING TO CONTROLLED-ACCESS HIGHWAYS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE: Two-thirds of all members elected to each House thereof concurring  
therein.)

Section 1. Amend §4127, Title 21, Delaware Code, by striking the words in the title  
"Unlawful Evasion of Delaware Turnpike Tolls" and substituting in lieu thereof the words:  
"Unlawful Evasion of Delaware Turnpike and The Korean War Veterans Memorial Highway;  
Harassment of Toll Collectors."

Section 2. Amend §4127(b), Title 21, Delaware Code, by striking the second sentence  
commencing with the words "Any violation" and ending with the words "5 days or both" and  
substituting in lieu thereof the following:

"Any such violation regarding the payment of tolls shall be punishable by a fine  
of not less than \$25 nor more than \$100, or imprisonment for not less than 10 nor more  
than 30 days, or both."

Section 3. Amend §4127, Title 21, Delaware Code by adding thereto a new subsection  
(g) to read as follows:

"(g) If any vehicle is witnessed by a police officer, toll collector, video  
surveillance device, to be in violation of subsection (b) of §4127, and the identity of the  
operator is not otherwise apparent, it shall be a rebuttable presumption that the person in  
whose name the vehicle is registered committed such violation of subsection (b) §4127."

Section 4. Amend §4127, Title 21, Delaware Code, by adding thereto a new subsection  
(h) to read as follows:

"(h) Any person who commits an act of offensive touching, presents payment in  
the form of an obviously unsanitary piece of U.S. currency, or who commits any act  
knowing that one is thereby likely to cause offense or alarm to an on duty toll collector,  
will be guilty of an unclassified misdemeanor."

Approved May 23, 1996

## CHAPTER 343

## FORMERLY

HOUSE BILL NO. 406  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 2 AND  
SENATE AMENDMENT NOS. 1 & 2AN ACT TO AMEND CHAPTER 5, TITLE 11 OF THE DELAWARE CODE RELATING TO  
CRIMES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend §1441, Chapter 5, Title 11 of the Delaware Code by striking subsection (h) of said section, and substituting in lieu thereof the following:

“(h) Notwithstanding any provision to the contrary, anyone retired as a police officer, as “police officer” is defined by §1911 of this Title, who is retired after having served at least 20 years in any law enforcement agency within this State, or who is retired and remains currently eligible for a duty-connected disability pension, may be licensed to carry a concealed deadly weapon for the protection of his or her person or property after his or her retirement, if the following conditions are strictly complied with:

(1) If he or she applies for the license within 90 days of the date of his or her retirement, he or she shall pay a fee of \$34.50 to the Prothonotary in the county where he or she resides and present to the Prothonotary both:

(i) a certification from the Attorney General’s office, in a form prescribed by the Attorney General’s office, verifying that the retired officer is in good standing with the law enforcement agency from which he or she is retired; and

(ii) a letter from the Chief of the retired officer’s agency verifying that the retired officer is in good standing with the law enforcement agency from which he or she is retired; or

(2) If he or she applies for the license more than 90 days, but within 20 years, of the date of his or her retirement, he or she shall pay a fee of \$34.50 to the Prothonotary in the county where he or she resides and present to the Prothonotary certification forms from the Attorney General’s office, or in a form prescribed by the Attorney General’s office, that:

(i) the retired officer is in good standing with the law enforcement agency from which he or she is retired;

(ii) the retired officer’s criminal record has been reviewed and that he or she has not been convicted of any crime greater than a violation since the date of his or her retirement; and

(iii) the retired officer has not been committed to a psychiatric facility since the date of his or her retirement.”

Approved May 23, 1996

CHAPTER 344

FORMERLY

HOUSE BILL NO. 434

AN ACT TO AMEND CHAPTER 5, TITLE 11 OF THE DELAWARE CODE RELATING TO THE CRIME OF RECKLESS BURNING OR EXPLODING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §804, Chapter 5, Title 11 of the Delaware Code by designating the first paragraph of said section as new subsection (a), and by striking the second paragraph of said section in its entirety.

Section 2. Amend §804, Chapter 5, Title 11 of the Delaware Code by adding thereto a new subsection, designated as subsection (b), which new subsection shall read as follows:

“(b) Reckless burning or exploding shall be punished as follows:

(1) Where the total amount of pecuniary loss caused by the burning or exploding, when totaled for all victims, is less than fifteen hundred dollars (\$1,500), such burning or exploding shall be a Class A misdemeanor.

(2) Where the total amount of pecuniary loss caused by the burning or exploding, when totaled for all victims, is fifteen hundred dollars (\$1,500) or more, such burning or exploding shall be a Class G felony.”

Approved May 23, 1996

CHAPTER 345

FORMERLY

SENATE BILL NO. 294

AN ACT TO AMEND AN ACT BEING CHAPTER 504, VOLUME 57, LAWS OF DELAWARE, AS AMENDED, ENTITLED “AN ACT TO INCORPORATE THE TOWN OF HENLOPEN ACRES” TO CLARIFY LONG-TERM BORROWING POWER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Subsection (a), Section 32, of Chapter 504, Volume 57, Laws of Delaware, as amended, entitled “An Act to Incorporate the Town of Henlopen Acres” be and the same is hereby amended by striking Subsection (a), Section 32, in its entirety and substituting in lieu thereof the following:

“Section 32.(a) In addition to other borrowing powers granted to the Town under this Charter or by State law, the Commissioners shall have authority to borrow money for any proper municipal purpose through the issuance of bonds or other evidence of indebtedness to secure the repayment thereof, on the full faith and credit of the Town, or such other security or securities as the Commissioners shall elect, for the payment of principal thereof and interest due thereon.”

Section 2. Subsection (c), Section 32, be and the same is hereby amended by adding a new Paragraph 7. to said subsection as follows:

“7. Paying all expenses deemed necessary by the Commissioners for the issuance of said bonds or other evidence of indebtedness, including bond discount and legal expenses of bond counsel.”

Approved May 23, 1996

## CHAPTER 346

## FORMERLY

## SENATE BILL NO. 295

AN ACT TO AMEND AN ACT BEING CHAPTER 504, VOLUME 57, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO INCORPORATE THE TOWN OF HENLOPEN ACRES" TO CHANGE THE TITLE OF THE TOWN CLERK TO TOWN MANAGER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 504, Volume 57, Laws of Delaware, as amended, entitled "An Act to Incorporate the Town of Henlopen Acres" by striking the word "Clerk" as it appears in Subsection (a) of Section 9; Subsections (a), (b), and (c) of Section 15; Subsection (1) of Section 16; Subsection (b) of Section 21; Subsection (g) of Section 21A; Subsection (e) of Section 22; Subsection (a), (c), (d) and (e) of Section 23; Subsection (a) and (b) of Section 24; Subsection (b) of Section 25; Subsections (a) and (b) of Section 27; Subsections (a), (b) and (c) of Section 28; and Paragraph 7, Subsection (a) of Section 34 thereof and substituting in lieu thereof the word "Manager".

Section 2. Amend the title prior to Section 15, Chapter 504, Volume 57, Laws of Delaware, as amended by striking the word "CLERK" as it appears therein and substituting in lieu thereof the word "MANAGER".

Approved May 23, 1996

## CHAPTER 347

## FORMERLY

SENATE BILL NO. 296  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND AN ACT BEING CHAPTER 504, VOLUME 57, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO INCORPORATE THE TOWN OF HENLOPEN ACRES" TO PROVIDE ALTERNATIVE METHODS FOR COLLECTION OF UNPAID TAXES, FEES AND OTHER CHARGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Subsection (b) of Section 24, Chapter 504, Volume 57, Laws of Delaware, As Amended, by striking said Subsection (b) in its entirety and substituting the following in lieu thereof:

(b) The Mayor or the Town Manager, when any tax becomes delinquent, may, in the name of the Town of Henlopen Acres, institute suit before any Justice of the Peace or in the Court of Common Pleas of the State of Delaware, in and for Sussex County, or in the Superior Court of the State of Delaware, in and for Sussex County, for the recovery of the unpaid tax in an action of debt, and upon judgment obtained, may sue out writs of execution as in case of other judgments recovered before a Justice of the Peace or in the Court of Common Pleas, or in the Superior Court, as the case may be.

Section 2. Amend Subsection (c) of Section 24, Chapter 504, Volume 57, Laws of Delaware, As Amended, by striking said Subsection (c) in its entirety and substituting the following in lieu thereof:

"(c) Should the Mayor or Town Manager so elect, he is empowered to sell the lands and tenements of the delinquent taxpayer or the lands and tenements of the delinquent taxpayer alienated subsequent to the levy of the tax by the direction of the Town Commissioners using any of those procedures specified for the sale of land for the collection of taxes on the part of the individuals charged with the responsibility for the collection of taxes for Sussex County, and all such procedures and methods available for the sale of land, as aforesaid, as they are presently enacted and hereafter amended, are included herein and made a part hereof by reference thereto, including the method of sale by monition, as the same is set forth in the statutes made and provided, substituting the Town of Henlopen Acres for Sussex County therein."

Section 3. Amend Section 24, Chapter 504, Volume 57, Laws of Delaware, As Amended, by adding a new Subsection (d) to read as follows:

"(d) All taxes imposed by the Town shall be and constitute a lien for a period of ten (10) years from date so levied upon the real property against which such charges are imposed. In the case of a life estate, the interest of the life tenant shall first be liable for the payment of any charges so levied. Such lien shall have preference and priority to all other prior liens on such real property, although such lien or liens be of a time and date prior to the time of attaching of such lien for taxes."

Approved May 23, 1996

## CHAPTER 348

## FORMERLY

## SENATE BILL NO. 313

AN ACT TO AMEND CHAPTER 237, VOLUME 51, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF BRIDGEVILLE" RELATING TO INCREASING THE POWER TO RAISE REVENUE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all Members elected to each House thereof concurring therein):

Section 1. AMEND Section 27, Chapter 237, Volume 51, Laws of Delaware, as amended, by striking the figure "\$100,000.00" as the same appears in the first sentence of the said section and by substituting the figure "\$200,000.00".

Approved May 23, 1996

## CHAPTER 349

## FORMERLY

## SENATE BILL NO. 363

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE  
GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Section 103(d), Title 8, Delaware Code, by deleting the last sentence thereof and substituting the following sentence: "If any instrument filed in accordance with subsection (e) of this section provides for a future effective date or time and if the transaction is terminated or its terms are amended to change the future effective date or time prior to the future effective date or time, the instrument shall be terminated or amended by the filing, prior to the future effective date or time set forth in such instrument, of a certificate of termination or amendment of the original instrument, executed in accordance with subsection (a) of this section, which shall identify the instrument which has been terminated or amended and shall state that the instrument has been terminated or the manner in which it has been amended."

Section 2. Amend Section 141(c), Title 8, Delaware Code, by denominating the current text thereof as subsection "(1)" of such section; by adding the following two sentences as the first two sentences of such section: "All corporations incorporated prior to July 1, 1996, shall be governed by subsection (1) of this section, provided that any such corporation may by a resolution adopted by a majority of the whole board elect to be governed by subsection (2) of this section, in which case subsection (1) of this section shall not apply to such corporation. All corporations incorporated on or after July 1, 1996, shall be governed by subsection (2) of this section."; and by adding the following as subsection (2) of such section: "(2) The board of directors may designate 1 or more committees, each committee to consist of 1 or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by this chapter to be submitted to stockholders for approval or (ii) adopting, amending or repealing any bylaw of the corporation."

Section 3. Amend Section 160(a)(1), Title 8, Delaware Code, by adding after the words "class or series of its stock" appearing in the first sentence the phrase ", or, if no shares entitled to such a preference are outstanding, any of its own shares."

Section 4. Amend Section 228(d), Title 8, Delaware Code, by adding the following words at the end of the first sentence: "and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders or members to take the action were delivered to the corporation as provided in subsection (c) of this section"; and by deleting the following phrase from the end of the subsection: ", and that written notice has been given as provided in this section".

Section 5. Amend Section 242(a), Title 8, Delaware Code, by adding the words ", subdivision, combination" immediately following the word "reclassification" in the two places where such word appears in Section 242(a).

Section 6. Amend Section 242(a)(3), Title 8, Delaware Code, by inserting immediately before "; or" at the end of such section the following: ", or by subdividing or combining the outstanding shares of any class or series of a class of shares into a greater or lesser number of outstanding shares".

Section 7. Amend Section 242(c), Title 8, Delaware Code, by adding the words "the effectiveness of" immediately following the words "prior to".

Section 8. Amend Section 251(b), Title 8, Delaware Code, by adding the following sentence at the end thereof: "The term 'facts,' as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation."

Section 9. Amend Section 252(b), Title 8, Delaware Code, by adding the following sentence at the end thereof: "The term 'facts,' as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation."

Section 10. Amend Section 253(a), Title 8, Delaware Code, by inserting the following immediately after the first sentence of subsection 253(a): "Any of the terms of the resolution of the board of directors to so merge may be made dependent upon facts ascertainable outside of such resolution, provided that the manner in which such facts shall operate upon the terms of the resolution is clearly and expressly set forth in the resolution. The term 'facts,' as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation."

Section 11. Amend Section 254(c), Title 8, Delaware Code, by adding the following sentence at the end thereof: "The term 'facts,' as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation."

Section 12. Amend Section 255(b), Title 8, Delaware Code, by adding the following sentence at the end thereof: "The term 'facts,' as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation."

Section 13. Amend Section 256(b), Title 8, Delaware Code by adding the following sentence at the end thereof: "The term 'facts,' as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation."

Section 14. Amend Section 257(b), Title 8, Delaware Code, by adding the following sentence at the end thereof: "The term 'facts,' as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation."

Section 15. Amend Section 263(b), Title 8, Delaware Code, by adding the following sentence at the end thereof: "The term 'facts,' as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation."

Section 16. Amend Section 264(b), Title 8, Delaware Code, by adding the following sentence at the end thereof: "The term 'facts,' as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation."

Section 17. Amend Section 251(c)(6), Title 8, Delaware Code, by deleting the words "the principal place of business" and inserting in lieu thereof the words "an office".

Section 18. Amend Section 252(c)(6), Title 8, Delaware Code, by deleting the words "the principal place of business" and inserting in lieu thereof the words "an office".

Section 19. Amend Section 254(d)(6), Title 8, Delaware Code, by deleting the words "the principal place of business" and inserting in lieu thereof the words "an office".

Section 20. Amend Section 263(c)(6), Title 8, Delaware Code, by deleting the words "the principal place of business" and inserting in lieu thereof the words "an office".

Section 21. Amend Section 264(c)(6), Title 8, Delaware Code, by deleting the words "the principal place of business" and inserting in lieu thereof the words "an office".

Section 22. Amend Section 262(d)(2), Title 8, Delaware Code, by deleting its text and substituting the following text: "If the merger or consolidation was approved pursuant to § 228 or § 253 of this title, each constituent corporation, either before the effective date of the merger or consolidation or within ten days thereafter, shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section; provided that, if the notice is given on or after the effective date of the merger or consolidation, such notice shall be given by the surviving or resulting corporation to all such holders of any class or series of stock of a constituent corporation that are entitled to appraisal rights. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within twenty days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given; provided that, if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

Section 23. Amend Section 273(a), Title 8, Delaware Code, by adding the words ", unless otherwise provided in the certificate of incorporation of the corporation or in a written agreement between the stockholders," immediately after the words "either stockholder may".

Section 24. This Act shall be effective on July 1, 1996.

Approved May 23, 1996

## CHAPTER 350

## FORMERLY

SENATE BILL NO. 315  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 45, TITLE 6, DELAWARE CODE, RELATING TO EQUAL ACCOMMODATIONS; AND CHAPTER 30, TITLE 31, DELAWARE CODE, RELATING TO THE STATE HUMAN RELATIONS COMMISSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Chapter 45, Title 6, Delaware Code, is amended by striking it in its entirety and inserting in lieu thereof a new Chapter 45 to read as follows:

**"CHAPTER 45. EQUAL ACCOMMODATIONS.**

<b>Section</b>	<b>Title</b>
4500	Short Title
4501	Purpose and Construction
4502	Definitions
4503	Persons Entitled to Protection
4504	Unlawful Practices
4505	Commission's Authority; Power to Delegate Authority
4506	Commission's Power to Adopt Rules
4507	Education and Conciliation
4508	Procedure on Complaint
4509	Commission's Power to Investigate Compliance
4510	Compelling Attendance of Witnesses and Production of Documents, Oaths, Subpoenas
4511	Judicial Review
4512	Enforcement by the Attorney General

§ 4500. **Short Title.**

This chapter may be cited as the 'Delaware Equal Accommodations Law.'

§ 4501. **Purpose and Construction.**

This chapter is intended to prevent, in places of public accommodations, practices of discrimination against any person because of race, age, marital status, creed, color, sex, handicap or national origin. This chapter shall be liberally construed to the end that the rights herein

provided for all people, without regard to race, age, marital status, creed, color, sex, handicap or national origin, may be effectively safeguarded.

**§ 4502. Definitions.**

As used in this chapter:

(1) A 'place of public accommodation' means any establishment which caters to or offers goods or services or facilities to, or solicits patronage from, the general public. This definition shall apply to hotels and motels catering to the transient public, but it shall not apply to the sale or rental of houses, housing units, apartments, rooming houses or other dwellings, nor to tourist homes with less than ten rental units catering to the transient public.

(2) 'Chairperson' means the Chairperson of the State Human Relations Commission.

(3) 'Commission' means the State Human Relations Commission.

(4) 'Complainant' means the person who files a complaint under § 4508 of this chapter.

(5) 'Conciliation' means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations.

(6) 'Conciliation agreement' means a written agreement setting forth the resolution of the issues in conciliation.

(7) 'Discriminatory public accommodations practice' means an act that is unlawful under this chapter.

(8) 'Handicap' means a physical or mental impairment which substantially limits a person's major life activities, or being regarded as having such an impairment, but such terms do not include current, illegal use of a controlled substance as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802) or Delaware Code Title 16, Chapter 47, Uniform Controlled Substance Act. Discrimination against a handicapped person includes discrimination against the use of a support animal because of a physical handicap of the user. Support animal means any animal individually trained to do work or perform tasks to meet the requirements of a physically disabled person, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair or fetching dropped items.

(9) 'Marital status' means the legal relationship of parties as determined by the laws of marriage applicable to them or the absence of such a legal relationship.

(10) 'Panel' means a group of three (3) or more Commissioners appointed by the Chairperson to perform any task authorized by this chapter.

(11) 'Panel Chair' means that Commissioner serving on a Panel who is designated by the Chairperson to serve as the chairperson of the Panel.

(12) 'Respondent' means a person who is alleged to have committed a discriminatory public accommodations practice.

(13) 'Special Administration Fund' means the fund created pursuant to 31 Del. C. §3005.

**§ 4503. Persons Entitled to Protection.**

All persons within the jurisdiction of this State are entitled to the full and equal accommodations, facilities, advantages and privileges of any place of public accommodation

regardless of the race, age, marital status, creed, color, sex, handicap or national origin of such persons.

**§ 4504. Unlawful Practices.**

(a) No person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, shall directly or indirectly refuse, withhold from or deny to any person, on account of race, age, marital status, creed, color, sex, handicap or national origin, any of the accommodations, facilities, advantages, or privileges thereof. For the purpose of training support animals to be used by the handicapped, all trainers and their support animals shall be included within those covered by this subsection.

(b) No person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, shall directly or indirectly publish, issue, circulate, post or display any written, typewritten, mimeographed, printed or radio communications notice or advertisement to the effect that any of the accommodations, facilities, advantages and privileges of any place of public accommodation shall be refused, withheld from or denied to any person on account of race, age, marital status, creed, color, sex, handicap or national origin, or that the patronage or custom thereof of any person belonging to or purporting to be appearing to be of any particular race, age, marital status, creed, color, sex, handicap or national origin is unlawful, objectionable, or not acceptable, desired, accommodated or solicited, or that the patronage of persons of any particular race, age, marital status, creed, color, sex, handicap or national origin is preferred or is particularly welcomed, desired or solicited.

(c) It shall be unlawful to assist, induce, incite or coerce another person to commit any discriminatory public accommodations practice prohibited by subsection (a) or (b) of this section.

**§ 4505. Commission's Authority; Power to Delegate Authority.**

(a) The authority and responsibility for administering this chapter shall be vested in the State Human Relations Commission.

(b) The Commission may delegate to a Panel any of its functions, duties and powers under this chapter including, but not limited to, the holding of public hearings and the ordering of relief pursuant to this chapter.

(c) The Commission may delegate to employees of the Division of Human Relations any of its functions, duties and powers with respect to investigating, conciliating, reporting or otherwise acting as to any work, business or matter under this chapter but may not delegate to such employees any of its functions, duties and powers with respect to the holding of public hearings or the ordering of relief pursuant to this chapter.

**§ 4506. Commission's Power to Adopt Rules.**

The Commission shall have the power in accordance with the Administrative Procedures Act in Title 29 to adopt rules and regulations concerning the manner in which complaints shall be investigated or other investigations pursuant to this chapter shall be conducted, the manner in which public hearings shall be conducted, the general form and content of agreements and orders provided for in this chapter and such other rules as the Commission shall consider appropriate to assist it in performing its duties and in carrying out the purposes of this chapter. Such rules and regulations shall have the force and effect of law.

**§ 4507. Education and Conciliation.**

The Commission may commence such educational and conciliatory activities as, in its judgement, will further the purposes of this chapter. It may call conferences of persons in the business industry and other interested parties to acquaint them with the provisions of this chapter and its suggested means of implementing it and endeavor, with their advice, to work out programs of voluntary compliance and of enforcement. The Commission may consult with State and local officials and other interested parties to learn the extent, if any, to which discriminatory public accommodations practices exist in the State or locality, and whether and how State or

local enforcement programs might be utilized to combat such discrimination. The Commission may issue reports on such conferences and consultations as it deems appropriate.

**§ 4508. Procedure on Complaint.**

(a) A person believing himself aggrieved by a discriminatory public accommodation practice proscribed by § 4504 of this chapter may, by himself or his attorney-at-law, file with the Commission a complaint in writing stating:

(1) his or her name and address;

(2) the name and location of the place of public accommodation at which the discriminatory public accommodation practice occurred, and the date, time and an explanation thereof;

(3) if known, the name and address of each Respondent and, if different, the name of the owner, lessee, proprietor, manager or superintendent of the place of public accommodation; and

(4) such other information as the Commission requires.

(b) No complaint shall be filed with the Commission more than 90 days after the occurrence of the alleged discriminatory public accommodation practice.

(c) Within 120 days after the complaint is filed, the Commission shall investigate the complaint and endeavor to eliminate any unlawful discriminatory practice discovered through conciliation. Insofar as possible, conciliation meetings shall be held in the county where the alleged discriminatory public accommodations practice occurred. If the matter is resolved through conciliation, the parties shall enter a conciliation agreement stating the terms of the resolution of the matter.

(d) Whenever the Commission has reasonable cause to believe that a Respondent has breached a conciliation agreement, the Commission shall refer the matter to the Attorney General with a recommendation that a civil action be filed under § 4512 of this chapter for the enforcement of such agreement.

(e) If a complaint cannot be resolved through conciliation as provided in subsection (c), the Commission shall appoint a Panel to hold a public hearing within 60 days after the expiration of 120-day period for investigation and conciliation. The deadlines provided in subsections (c) and (e) may be extended by the Chairperson or the Panel Chair at the request of any party or an employee of the Division of Human Relations upon a showing of good cause.

(f) Public hearings shall be conducted in accordance with rules prescribed by the Commission. Each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses and obtain the issuance of subpoenas under § 4509 of this chapter. The Delaware Rules of Evidence shall apply to the presentation of evidence in a public hearing as they would in an administrative hearing conducted in accordance with Subchapter III of the Administrative Procedures Act. A record shall be kept of all public hearings, a transcript of which shall be provided at cost upon request of a party. Decisions of the Panel shall be made by a majority of the members of the Panel.

(g) If the Panel determines that a violation of § 4504 has not occurred, it shall issue an order dismissing the complaint. The Panel may award reasonable attorneys' fees, costs and expenses to the Respondent pursuant to this subsection if it determines that the complaint was brought for an improper purpose, such as to harass or embarrass the Respondent.

(h) If the Panel determines that a violation of § 4504 has occurred, it shall issue an order stating its findings of fact and conclusions of law and containing such relief as may be appropriate, including actual damages suffered by the aggrieved person 'including damages caused by humiliation and embarrassment', costs, expenses, reasonable attorneys' fees and injunctive or other equitable relief. To vindicate the public interest, the Panel may assess a civil penalty against the Respondent(s), to be paid to the Special Administration Fund:

(1) in an amount not exceeding \$5,000 for each discriminatory public accommodations practice if the Respondent has not been adjudged to have committed any prior discriminatory public accommodations practice;

(2) in an amount not exceeding \$15,000 for each discriminatory public accommodations practice if the Respondent has been adjudged to have committed two or *other discriminatory public accommodations practice during the 5-year period ending on the date of the complaint*; and

(3) in an amount not exceeding \$25,000 for each discriminatory public accommodations practice if the Respondent has been adjudged to have committed two or more discriminatory public accommodations practices during the 7-year period ending on the date of the complaint.

(i) Copies of orders entered pursuant to subsections (g) and (h) shall be served personally or by registered or certified mail to each party or their counsel.

(j) If the Commission concludes, at any time following the filing of a complaint, that prompt judicial action is necessary to carry out the purpose of this chapter, the Commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such authorization, the Attorney General may elect, in the absence of a conflict of duties, to commence and maintain such an action in the Court of Chancery on behalf of the Commission. If the Attorney General does not elect to pursue such an action, the Commission may, with the written authorization of the Secretary of State, employ special counsel to pursue such action notwithstanding 29 Del. C. Section 2507. The commencement of a civil action under this subsection does not affect the initiation or continuation of proceedings under this section.

**§ 4509. Commission's Power to Investigate Compliance.**

The Commission is empowered to investigate compliance with this chapter whether or not a complaint is filed pursuant to § 4508. In furtherance of and not in limitation of this power, the Commission may review practices of any place of public accommodation within this State. Investigations pursuant to this section that cannot be resolved through conciliation may be referred by the Commission to the Attorney General for further proceedings pursuant to § 4512 of this chapter.

**§ 4510. Compelling Attendance of Witnesses and Production of Documents, Oaths, Subpoenas.**

(a) The Commission may issue subpoenas and order discovery in aid of investigations and hearings under this chapter. Such subpoenas shall be signed by the Chairperson or Panel Chair and may be served by any sheriff, deputy sheriff, constable or any member of the Commission or employee of the Division of Human Relations and return thereof shall be made to the Commission. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the Superior Court.

(b) At any public hearing, any member of the Commission may administer oaths to all witnesses who may be called before the Commission.

(c) Witnesses summoned by a subpoena under this chapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in Superior Court.

(d) Where any person fails or neglects to attend and testify or answer any lawful inquiry or to produce records, documents or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under such subsection (a), the Attorney General, on behalf of the Commission, shall petition the Superior Court in the county where such person resides or conducts business for an order requiring such person to appear before the Commission to produce evidence if so ordered or to give testimony pertaining to the matter

under investigation or in question. Any failure to obey such order may be punished by the court as being in contempt of court.

(e) **Criminal penalties -**

(1) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a) of this section, shall, in each instance be fined not more than \$2,500 or imprisoned not more than one year, or both.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this chapter:

(A) makes or causes to be made any false entry or statement of fact in any report, account, record or other document produced pursuant to subpoena or other lawful order under subsection (a) of this section;

(B) willfully neglects or fails to make or cause to be made full, true and correct entries in such reports, accounts, records or other documents; or

(C) willfully mutilates, alters or by any other means falsifies any documentary evidence; shall in each instance be fined not more than \$2,500 or imprisoned not more than one year, or both.

**§ 4511. Judicial Review.**

(a) Any party aggrieved by an order for relief under § 4508 of this chapter granting or denying, in whole or in part, the relief sought, may obtain a review of such order in the Superior Court in the county in which the discriminatory public accommodations practice is alleged to have occurred, pursuant to the civil rules of that court and the Administrative Procedures Act. Filing of the petition for review shall be not later than 30 days after the order is entered.

(b) Any party to the proceeding before the Panel may intervene in the Superior Court in the appeal process.

(c) No objection not made before the Panel shall be considered by the Court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances or when the interests of justice so require.

**§ 4512. Enforcement by the Attorney General.**

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaging in a pattern of discriminatory public accommodation practices, that any person or group of persons has been denied any of the rights granted by this chapter and such denial raises an issue of general public importance or that any party to a conciliation agreement has breached such agreement, the Attorney General may commence a civil action in the Superior Court, Court of Chancery or both in any county of the State for appropriate relief including, but not limited to, equitable relief, monetary damages, reasonable attorneys' fees, costs and expenses. To vindicate the public interest, the court may assess a civil penalty to be paid to the Special Administration Fund in an amount not exceeding \$25,000 for a first violation of this section and in an amount not exceeding \$50,000 for any subsequent violation of this section.

(b) When a civil action is initiated by the Attorney General pursuant to this section, no court shall charge fees of any kind in such proceeding to the Attorney General, the Commission or any of its members."

Section 2. Amend § 3005(a), Title 31, Delaware Code, by striking subsections (1) and (2) in their entirety and substituting in lieu thereof the following:

"(1) All civil penalties assessed and collected pursuant to Chapter 45 or 46 of Title 6.

(2) Costs, attorneys' fees and expenses awarded to the Commission pursuant to Chapter 45 or 46 of Title 6."

Section 3. Amend §3005(b) (2), Title 31, Delaware Code, by striking the words "§§ 4605 and 4606 of Title 6" in the first sentence and replacing them with the words "in Chapters 45 or 46 of Title 6".

Section 4. If any clause, sentence, subsection, provision or part of this Act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, invalidate or affect the remainder of this Act which shall remain in full force and effect, and the application of the provision in question to other persons not similarly situated or to other circumstances shall not be affected thereby.

Section 5. This Act shall be effective on July 1, 1996.

Approved May 30, 1996

#### CHAPTER 351

#### FORMERLY

#### SENATE BILL NO. 195

#### AS AMENDED BY SENATE AMENDMENT NO. 2

#### AN ACT TO AMEND TITLE 18 OF THE DELAWARE INSURANCE CODE RELATING TO LONG-TERM CARE INSURANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Chapter 71, Title 18 of the Delaware Code by redesignating the existing §§7106, 7107, and 7108 as §§7107, 7108 and 7109, respectively, and by adding thereto a new section to read as follows:

"7106. Nonforfeiture benefit requirement.

(a) No insurer may issue or deliver a long-term care insurance policy in this state unless the insurer offers to the applicant the option to purchase a policy that provides for nonforfeiture benefits.

(b) The Insurance Commissioner shall promulgate rules and regulations which specify the types of nonforfeiture benefits to be included in the policies and certificates, the standards for the benefits, and the date nonforfeiture benefits must commence."

Section 2. This Act shall become effective six months after its enactment into law.

Approved June 5, 1996

CHAPTER 352

FORMERLY

HOUSE BILL NO. 399

AN ACT TO AMEND CHAPTER 21 OF TITLE 29 RELATING TO THE GOVERNOR'S AUTHORITY TO PROCLAIM SPECIAL DAYS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 29, Chapter 21 of the Delaware Code by adding a new section 2112, as follows:

§ 2112 Father's Day Proclamation.

"The Governor may issue annually a proclamation calling upon state officials to display the United States flag on all state and school buildings, and the people of this state to display the flag at their homes, lodges, churches and places of business and other suitable places, on the third Sunday in June, known as Father's Day, as a public expression of love and reverence for the fathers of our state and as an inspiration for better homes and closer ties between fathers and the state."

Approved June 5, 1996

CHAPTER 353

FORMERLY

HOUSE BILL NO. 359

AS AMENDED BY HOUSE AMENDMENT NO. 1 AND SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO ALCOHOLIC LIQUORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subsection (40) of Section 101 of Title 4 of the Delaware Code by striking subsection (40) in its entirety and by substituting in lieu thereof the following:

"(40) 'Spirits, wine, and beer tasting' means the consumption of spirits, wine, and beer for the purpose of sampling for prospective purchase only. The quantity of any individual spirit, wine, and beer sampled is not to exceed one (1) ounce for wine and beer and one-half (1/2) ounce for spirits. Spirits must be 80 proof or less and beer must be a new product line in the marketplace less than 1 year."

Section 2. Amend Section 525 of Title 4 of the Delaware Code by striking Section 525 in its entirety and by substituting in lieu thereof the following:

"Section 525. Spirits, Wine, and Beer Tasting.

A license to permit spirits, wine, and beer tasting may be granted by the Commission to any person holding a license under this title as a retailer. Spirits, wine, and beer tasting may take place only in a separate portion of a licensee's premises where alcoholic beverages are not sold. The separate portion of the premises shall be an area designated for spirits, wine, and beer tasting by the Commission. No charge may be made for the spirits, wine, and beer tasting."

Section 3. Amend §§512A(e) and 554(ee), Title 4, Delaware by deleting "wine tasting" as it appears in each and by inserting in lieu thereof in each "spirits, wine, and beer tasting".

Approved June 5, 1996

## CHAPTER 354

## FORMERLY

## HOUSE BILL NO. 487

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO HABEAS  
CORPUS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Title 10 of the Delaware Code by striking § 6901 in its entirety and by inserting in lieu thereof a new section to read:

“§ 6901. Jurisdiction To Grant Writs.

The writ of habeas corpus shall be awarded and issued by the Superior Court except in cases involving child support enforcement in which case the writ shall be awarded and issued by the Family Court. The writ may also be awarded and issued by the Family Court in other cases which are otherwise within its jurisdiction. A petition for the issuance of a writ of habeas corpus may be reviewed and decided by the judge issuing the order incarcerating the petitioner in the first instance.”

Section 2. Amend § 6903 of Title 10 of the Delaware Code by deleting subsection (a) in its entirety and by inserting in lieu thereof a new subsection to read:

“(a) A person committed by any judge of this State, a justice of the peace, or by the mayor or any Alderman of any city or town, for a contempt, except a contempt issued by the Family Court in a case involving a child support order, shall be entitled to the writ of habeas corpus in the Superior Court. A person committed by the Family Court in a case involving a child support order shall be entitled to the writ of habeas corpus in the Family Court of the State of Delaware.”

Approved June 5, 1996

CHAPTER 355

FORMERLY

HOUSE BILL NO. 550  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6, DELAWARE CODE, RELATING TO NEW HOME CONSTRUCTION AND THE COMPLETION OF UNFINISHED WORK.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subtitle II, Title 6 of the Delaware Code, by inserting a new Chapter 36 to read:

“CHAPTER 36. NEW HOME BUYERS PROTECTION ACT.

§ 3601. Definitions.

As used in this subchapter:

a) ‘New Residential Real Property’ means any estate or interest in real property improved by a new dwelling not previously occupied and constructed for use as a residence.

(b) ‘Seller’ means any individual, partnership, corporation, or trustee transferring new residential property or a new dwelling.

(c) ‘Buyer’ means any individual, partnership, corporation, or trustee purchasing any estate or interest in a new residential real property or new dwelling.

(d) ‘New Dwelling’ means a new multi-family, single family, or townhouse dwelling not previously occupied and constructed for use as a residence.

(e) ‘Vendor’ means any person, firm, partnership, corporation, or other entity that contracts to sell new dwellings or new residential real property.

(f) ‘Unfinished Work’ means a condition in a new residential real property or new dwelling which fails to comply with the work agreed upon by the vendor and/or seller in the specifications, contract terms, and applicable building codes.

(g) ‘Final Settlement’ means the time at which the parties have signed and delivered all papers and consideration to convey title to the estate or interest in a new residential real property or new dwelling.

§ 3602. New home construction - unfinished work and the escrow of monies.

(a) If any unfinished work is discovered prior to or at the time of the previously agreed upon final settlement date on new residential real property or a new dwelling, the vendor and/or seller shall be required to set aside from the proceeds of the sale, a sum of money equal to the contractual cost required to complete any such unfinished work. If the contract does not set forth the cost, the escrowed amount shall be the fair market value of completing said unfinished work. The escrow agreement shall specify the unfinished work at issue.

(b) Said monies shall be held in escrow for no longer than thirty (30) days following the completion of the unfinished work. No buyer may refuse to release monies escrowed pursuant to this section for unfinished work not specified pursuant to subsection (a) of this section.

(c) If the unfinished work specified at the final settlement has not been remedied upon the expiration of ninety (90) days from the date of final settlement or a date agreed upon by the parties and set forth in the escrow agreement, the monies held in escrow pursuant to this section shall be released to the buyer.

(d) Notwithstanding the above, this section shall apply only when the estimated cost to complete said unfinished work equals one percent (1%) or more of the contract price or when the aggregate estimated costs of completing all unfinished work equals one percent (1%) or more of the contract price.

(e) This section shall not apply when a buyer unilaterally requests that settlement take place on a date prior to the previously agreed upon final settlement date.

(f) To the extent the seller/vendor and the buyer agree that the buyer may withhold, at the final settlement, monies otherwise subject to escrow under this section, such an arrangement shall be deemed in compliance with this section.

### §3603. Remedies and Penalties

(a) In any successful action brought by a buyer for failure to acknowledge unfinished work subject to the escrow provisions of § 3602 or failure to escrow the contractual cost or the fair market value required to complete the unfinished work subject to the escrow provisions of § 3602, the court may order the seller/vendor to pay the amount that should have been escrowed and the costs of litigation. To the extent a seller/vendor proves that a buyer's request to escrow under § 3602 was not valid, the buyer may be liable for the seller/vendor's costs of litigation.

(b) Failure to comply with a buyer's valid request to escrow under § 3602 of this chapter shall constitute an unlawful practice in violation of § 2513 of this title and willful violations of § 3602 shall be punishable in accordance with § 2513(c) and/or § 2581 of this title. The Attorney General shall have the same authority to enforce, remedy and carry out the provisions of this chapter as is provided by § 2517 of title 29, and §§ 2511-2527 and §§ 2531-2536 of Title 6.

(c) The remedies and penalties provided for in this section are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions of law including but not limited to State and/or Federal criminal prosecutions and/or common law statutory actions brought by private parties."

Section 2. This Act shall be effective sixty days after enactment into law.

Approved June 7, 1996

## CHAPTER 356

## FORMERLY

## SENATE BILL NO. 350

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE, RELATING TO MORTGAGE  
LOAN BROKERS AND LICENSED LENDERS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend §2108, Title 5, Delaware Code, by striking said section in its  
entirety and substituting in lieu thereof a new subsection 2108 to read as follows:

"§2108. Surety Bonds and Irrevocable Letters of Credit.

(a) Surety Bonds

(1) Every licensee shall file with the Commissioner, in a form  
satisfactory to the Commissioner, an original corporate surety bond, with surety  
provided by a corporation authorized to transact business in this State, in the  
principal sum of \$25,000.

(2) No bond shall be accepted unless the following requirements are  
satisfied:

(i) the term of the bond shall be commensurate with the  
license period or continuous;

(ii) the expiration date of the bond shall not be earlier  
than midnight of the date on which the license expires; and

(iii) the bond shall run to the State, for the benefit of the  
Office of the State Bank Commissioner and for the benefit of all  
consumers injured by any wrongful act, omission, default, fraud or  
misrepresentation by a licensee in the course of its activity as a  
licensee. Compensation under the bond shall be for amounts  
which represent actual losses and shall not be payable for claims  
made by business creditors, third-party service providers, agents or  
persons otherwise in the employ of the licensee. Surety claims  
shall be paid to the Office of the State Bank Commissioner by the  
insurer not later than 90 days after receipt of a claim. Claims paid  
after 90 days shall be subject to daily interest at the legal rate. The  
aggregate liability of the surety on the bond, exclusive of any  
interest which accrues for payments made after 90 days, shall in no  
event exceed the amount of such bond.

(3) If the licensee changes its surety company or the bond is  
otherwise amended, the licensee shall immediately provide  
the Commissioner with the amended original copy of the  
surety bond. No cancellation of an existing bond by a surety  
shall be effective unless written notice of its intention to  
cancel is filed with the Commissioner at least thirty (30) days  
before the date upon which cancellation shall take effect.

(4) The Commissioner may require potential claimants to provide  
such documentation and affirmations as the Commissioner  
shall determine to be necessary and appropriate. In the event  
the Commissioner determines that multiple consumers have  
been injured by a licensee, the Commissioner shall cause a

notice to be published for the purpose of identifying all relevant claims.

- (5) When a surety company receives a claim against the bond of a licensee, it shall immediately notify the Commissioner and shall not pay any claim unless and until it receives notice to do so from the Commissioner.
  - (6) The Commissioner shall have a period of two calendar years after the effective date of cancellation or termination of the surety bond by the insurer to submit claims to the insurer.
- (b) Irrevocable Letters of Credit

In lieu of requiring the filing of a surety bond, the Commissioner may, at the Commissioner's discretion, accept from a licensee an irrevocable letter of credit.

- (1) Such irrevocable letters of credit shall be provided by an insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. §1813(c)) acceptable to the Commissioner, in a form satisfactory to the Commissioner in the principal sum of \$25,000.
- (2) No irrevocable letter of credit shall be accepted unless the following requirements are satisfied:
  - (i) The irrevocable letter of credit shall run to the State, for the benefit of the Office of the State Bank Commissioner and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the irrevocable letter of credit shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. The aggregate liability of the insured depository institution issuing the irrevocable letter of credit shall in no event exceed the amount of such irrevocable letter of credit; and
  - (ii) Draws upon such irrevocable letters of credit shall be available by sight drafts thereunder, in amounts determined by the Commissioner, up to the aggregate amount of the irrevocable letter of credit. Such drafts shall be paid in accordance with §5-112(1) of Title 6 of the Delaware Code.
- (3) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner shall determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.
- (4) The Commissioner may refuse release of an irrevocable letter of credit, following the surrender of a license, up to two (2) years after the effective date of such termination of licensure."

Section 2. Amend §2208, Title 5, Delaware Code, by striking said section in its entirety and substituting in lieu thereof a new section 2208 to read as follows:

"§2208. Surety Bonds and Irrevocable Letters of Credit.

(a) Surety Bonds

- (1) Every licensee shall file with the Commissioner, in a form satisfactory to the Commissioner, an original corporate surety bond, with surety provided by a corporation authorized to transact business in this State, in the principal sum to be determined by the Commissioner, except that the bond amount shall not be less than \$50,000 or more than \$200,000. In determining the amount of the bond required for a licensee, the Commissioner shall consider, among other things:
  - (i) the dollar value of the lender's Delaware business;
  - (ii) the dollar value of advance fees collected by the lender;
  - (iii) the periods for which such fees are held before a loan is funded; and
  - (iv) such other and further criteria as the Commissioner may deem necessary and appropriate.
- (2) No bond shall be accepted unless the following requirements are satisfied:
  - (i) the aggregate value of the bond shall be equal to or greater than the amount determined in accordance with subsection (a)(1) of this section;
  - (ii) the term of the bond shall be commensurate with the license period or continuous;
  - (iii) the expiration date of the bond shall not be earlier than midnight of the date on which the license expires; and
  - (iv) the bond shall run to the State, for the benefit of the Office of the State Bank Commissioner and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the bond shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. Surety claims shall be paid to the Office of the State Bank Commissioner by the insurer not later than 90 days after receipt of a claim. Claims paid after 90 days shall be subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest which accrues for payments made after 90 days, shall in no event exceed the amount of such bond.
- (3) If the licensee changes its surety company or the bond is otherwise amended, the licensee shall immediately provide the Commissioner with the amended original copy of the surety bond. No cancellation of an existing bond by a surety shall be effective unless written notice of its intention to cancel is filed with the Commissioner at least thirty (30) days before the date upon which cancellation shall take effect.

- (4) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner may determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.
- (5) When a surety company receives a claim against the bond of a licensee, it shall immediately notify the Commissioner and shall not pay any claim unless and until it receives notice to do so from the Commissioner.
- (6) The Commissioner shall have a period of two calendar years after the effective date of cancellation or termination of the surety bond by the insurer to submit claims to the insurer.

(b) Irrevocable Letters of Credit

In lieu of requiring the filing of a surety bond, the Commissioner may, at the Commissioner's discretion, accept from a licensee an irrevocable letter of credit.

- (1) Such irrevocable letters of credit shall be provided by an insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. §1813(e)) acceptable to the Commissioner, in a form satisfactory to the Commissioner in the principal sum to be determined by the Commissioner, except that the irrevocable letter of credit amount shall not be less than \$50,000 or more than \$200,000. In determining the amount of the irrevocable letter of credit required for a licensee, the Commissioner shall consider, among other things:
  - (i) the dollar value of the lender's Delaware business;
  - (ii) the dollar value of advance fees collected by the lender;
  - (iii) the periods for which such fees are held before a loan is funded; and
  - (iv) such other and further criteria as the Commissioner may deem necessary and appropriate.
- (2) No irrevocable letter of credit shall be accepted unless the following requirements are satisfied:
  - (i) the aggregate value of the irrevocable letter of credit shall be equal to or greater than the amount determined by subsection (b)(1) of this section;
  - (ii) The irrevocable letter of credit shall run to the State, for the benefit of the Office of the State Bank Commissioner and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the irrevocable letter of credit shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. The aggregate liability of the insured depository institution issuing the irrevocable letter of credit shall in no event exceed the amount of such irrevocable letter of credit; and

- (iii) Draws upon such irrevocable letters of credit shall be available by sight drafts thereunder, in amounts determined by the Commissioner, up to the aggregate amount of the irrevocable letter of credit. Such drafts shall be honored in accordance with §5-112(1) of Title 6 of the Delaware Code.
- (3) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner may determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.
- (4) The Commissioner may refuse release of an irrevocable letter of credit, following the surrender of a license, up to two (2) years after the effective date of such termination of licensure."

Section 3. This Act shall become effective for licensing periods beginning January 1, 1997. Any surety bonds or letters of credit provided in advance of January 1, 1997, for licensing periods beginning January 1, 1997, shall comply with the requirements contained herein.

Approved June 7, 1996

CHAPTER 357

FORMERLY

HOUSE BILL NO. 467  
AS AMENDED BY HOUSE AMENDMENT NO. 1 AND  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 43, TITLE 21 OF THE DELAWARE CODE RELATING TO MOTOR VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4313(d), Title 21 of the Delaware Code by striking subsection (d) in its entirety and substituting in lieu thereof a new subsection (d) to read as follows:

"No person shall be convicted under this section if that person possesses a statement signed by a licensed practitioner of medicine and surgery or osteopathic medicine, or optometry, verifying that tinted windows are medically necessary for the owner or usual operator of said vehicle."

Approved June 10, 1996

CHAPTER 358

FORMERLY

SENATE BILL NO. 247  
AS AMENDED BY SENATE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 29 DELAWARE CODE RELATING TO THE DELAWARE  
COMMISSION OF VETERANS AFFAIRS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend 8721(b) of Title 29 Delaware Code by striking the words "With the concurrence of the Secretary of State,".

Section 2. Amend 8721(f) of Title 29 Delaware Code by striking the words "if requested,"

Approved June 10, 1996

## CHAPTER 359

## FORMERLY

SENATE BILL NO. 234  
AS AMENDED BY SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE BY ADDING THERETO A NEW SECTION GRANTING A SELF-ANALYSIS PRIVILEGE TO DEPOSITORY INSTITUTIONS AND THEIR AFFILIATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 9, Title 5 of the Delaware Code, by adding thereto a new Section which Section shall read in its entirety as follows:

"§940. Self-Analysis Privilege for Depository Institutions and Affiliates.

(a) Definitions. For purposes of this Section, the following words and phrases shall have the meanings ascribed to them herein:

(1) 'Depository Institution' means a state-chartered or federally-chartered financial institution that is located in this State and is authorized to maintain deposit or share accounts.

(2) 'Depository Institution Affiliate' means any corporation whose stock is at least eighty percent (80%) owned by a Depository Institution or the holding company of a Depository Institution.

(3) 'Compliance Review Committee' means a person or persons assigned by a Depository Institution or a Depository Institution Affiliate to test, review or evaluate its conduct, transactions or potential transactions for the purpose of monitoring and improving or enforcing compliance with (i) safe, sound and fair lending practices, (ii) financial reporting to federal or state regulatory agencies, (iii) the Depository Institution's or Depository Institution Affiliate's own policies and procedures, or (iv) federal or state statutory or regulatory requirements.

(4) 'Compliance Review Document' means any document prepared for or created by a Compliance Review Committee for its exclusive use.

(5) 'Person' means an individual, a group of individuals, a board committee, or a corporation, partnership, firm, association, trust, pool, syndicate, sole proprietorship, unincorporated association or any other form of entity not specifically listed herein.

(b) Privilege. Notwithstanding any provisions of Delaware common or statutory law to the contrary, except as provided in subsection (c) of this section:

(1) Compliance Review Documents shall be confidential and shall not be discoverable or admissible into evidence in any civil action;

(2) Compliance Review Documents delivered to a federal, state or foreign governmental or regulatory agency shall remain confidential and shall not be discoverable or admissible in any civil action; and

(3) No person serving on a Compliance Review Committee or acting at the request of a Compliance Review Committee shall be required to testify in any civil action (i) as to the contents or conclusions of any Compliance Review Document or (ii) as to the actions taken by a Compliance Review Committee.

(c) Limitations.

(1) This section shall not apply to any person serving on or at the request of a Compliance Review Committee in connection with such person's duties pursuant to the Depository Institution's or Depository Institution Affiliates' bylaws or operations manual, management responsibility for the operations, records, employees or activities being examined or evaluated by the Compliance Review Committee.

(2) This section shall not be construed to limit the discovery or admissibility in any civil action of any documents that are not Compliance Review Documents.

(3) This section shall not apply if, after an in camera review by the court consistent with applicable rules of procedure, the court determines that the compliance review was initiated or used to enable persons serving on the Compliance Review Committee, or the Depository Institution or the Depository Institution Affiliate which created such Committee, to commit or plan to commit what the Committee knew or reasonably should have know to be a crime."

Approved June 10, 1996

## CHAPTER 360

## FORMERLY

## HOUSE BILL NO. 528

AN ACT TO AMEND CHAPTER 18, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANIES AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 18-206(a), Chapter 18, Title 6 of the Delaware Code by adding immediately following the words "any restated certificate," the words "any certificate of conversion to limited liability company, any certificate of transfer, any certificate of limited liability company domestication,".

Section 2. Amend § 18-206(a)(1), Chapter 18, Title 6 of the Delaware Code by adding immediately following the words "the restated certificate" the words ", the certificate of conversion to limited liability company, the certificate of transfer, the certificate of limited liability company domestication".

Section 3. Amend § 18-206(b), Chapter 18, Title 6 of the Delaware Code by adding immediately following the first usage of the words "acts as a certificate of cancellation," in the second sentence of said subsection, the words "or a certificate of transfer," by adding immediately following the second usage of the words "acts as a certificate of cancellation," in the second sentence of said subsection, the words "or a certificate of transfer," and by adding the following sentences immediately following the second sentence of said subsection:

"Upon the filing of a certificate of limited liability company domestication, or upon the future effective date or time of a certificate of limited liability company domestication, the entity filing the certificate of limited liability company domestication is domesticated as a limited liability company with the effect provided in § 18-212 of this chapter. Upon the filing of a certificate of conversion to limited liability company, or upon the future effective date or time of a certificate of conversion to limited liability company, the entity filing the certificate of conversion to limited liability company is converted to a limited liability company with the effect provided in § 18-214 of this chapter."

Section 4. Amend § 18-206(c), Chapter 18, Title 6 of the Delaware Code by adding immediately following the words "a restated certificate" the words ", a certificate of conversion to limited liability company, a certificate of transfer, a certificate of limited liability company domestication".

Section 5. Amend § 18-207, Chapter 18, Title 6 of the Delaware Code by adding immediately prior to the punctuation mark "." at the end of the only sentence of said section the words "and which are permitted to be set forth in a certificate of formation by § 18-215(b) of this chapter"

Section 6. Amend Subchapter II, Chapter 18, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 18-212" to read as follows:

**"§ 18-212. Domestication of non-United States entities.**

(a) As used in this section, "non-United States entity" means a foreign limited liability company (other than one formed under the laws of a state), or a corporation, a business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a partnership (whether general (including a registered

limited liability partnership) or limited (including a registered limited liability limited partnership)), formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

(b) Any non-United States entity may become domesticated as a limited liability company in the State of Delaware by complying with subsection (g) of this section and filing in the Office of the Secretary of State in accordance with § 18-206 of this chapter:

(1) A certificate of limited liability company domestication that has been executed by 1 or more authorized persons in accordance with § 18-204 of this chapter; and

(2) A certificate of formation that complies with § 18-201 of this chapter and has been executed by 1 or more authorized persons in accordance with § 18-204 of this chapter.

(c) The certificate of limited liability company domestication shall state:

(1) The date on which and jurisdiction where the non-United States entity was first formed, incorporated, created or otherwise came into being;

(2) The name of the non-United States entity immediately prior to the filing of the certificate of limited liability company domestication;

(3) The name of the limited liability company as set forth in the certificate of formation filed in accordance with subsection (b) of this section;

(4) The future effective date or time (which shall be a date or time certain) of the domestication as a limited liability company if it is not to be effective upon the filing of the certificate of limited liability company domestication and the certificate of formation; and

(5) The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-United States entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of limited liability company domestication.

(d) Upon the filing in the Office of the Secretary of State of the certificate of limited liability company domestication and the certificate of formation or upon the future effective date or time of the certificate of limited liability company domestication and the certificate of formation, the non-United States entity shall be domesticated as a limited liability company in the State of Delaware and the limited liability company shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding § 18-201 of this chapter, the existence of the limited liability company shall be deemed to have commenced on the date the non-United States entity commenced its existence in the jurisdiction in which the non-United States entity was first formed, incorporated, created or otherwise came into being.

(e) The domestication of any non-United States entity as a limited liability company in the State of Delaware shall not be deemed to affect any obligations or liabilities of the non-United States entity incurred prior to its domestication as a limited liability company in the State of Delaware, or the personal liability of any person therefor.

(f) The filing of a certificate of limited liability company domestication shall not affect the choice of law applicable to the non-United States entity, except that from the effective date or time of the domestication, the law of the State of Delaware, including the provisions of this chapter, shall apply to the non-United States entity to the same extent as if the non-United States entity had been formed as a limited liability company on that date.

(g) Prior to filing a certificate of limited liability company domestication with the Office of the Secretary of State, a limited liability company agreement shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the

case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate.

(h) When any domestication shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the non-United States entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-United States entity, as well as all other things and causes of action belonging to such non-United States entity, shall be vested in the domestic limited liability company and shall thereafter be the property of the domestic limited liability company as they were of the non-United States entity immediately prior to its domestication, and the title to any real property vested by deed or otherwise in such non-United States entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such non-United States entity shall be preserved unimpaired, and all debts, liabilities and duties of the non-United States entity that has been domesticated shall thenceforth attach to the domestic limited liability company, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by the domestic limited liability company."

Section 7. Amend Subchapter H, Chapter 18, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 18-213" to read as follows:

**"§ 18-213. Transfer and continuance of domestic limited liability companies.**

(a) Upon compliance with the provisions of this section, any limited liability company may transfer to any jurisdiction, other than any state, that permits the transfer to or domestication or continuance in such jurisdiction of a limited liability company.

(b) Notwithstanding anything to the contrary in this chapter or a limited liability company agreement, a transfer described in subsection (a) of this section shall be approved in writing by all of the managers and all of the members. If all of the managers and all of the members of the limited liability company shall approve the transfer described in subsection (a) of this section, a certificate of transfer, executed in accordance with § 18-204 of this chapter, shall be filed in the Office of the Secretary of State in accordance with § 18-206 of this chapter. The certificate of transfer shall state:

(1) The name of the limited liability company and, if it has been changed, the name under which it was originally filed;

(2) The date of the filing of its original certificate of formation with the Secretary of State;

(3) The jurisdiction to which the limited liability company will transfer;

(4) The future effective date or time (which shall be a date or time certain) of the transfer to the jurisdiction specified in subsection (b)(3) of this section if it is not to be effective upon the filing of the certificate of transfer;

(5) That the transfer of the limited liability company has been approved in accordance with the provisions of this section;

(6) The agreement of the limited liability company that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the limited liability company arising while it was a limited liability company of the State of Delaware, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding; and

(7) The address to which a copy of the process referred to in subsection (b)(6) of this section shall be mailed to it by the Secretary of State. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 18-911(e) of this chapter shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in

this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the limited liability company that has transferred out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 18-911(c) of this chapter.

(c) Upon the filing in the Office of the Secretary of State of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Secretary of State of all fees prescribed in this chapter, the Secretary of State shall certify that the limited liability company has filed all documents and paid all fees required by this chapter, and thereupon the limited liability company shall cease to exist as a limited liability company of the State of Delaware. Such certificate of the Secretary of State shall be *prima facie* evidence of the transfer by such limited liability company out of the State of Delaware.

(d) The transfer of a limited liability company out of the State of Delaware in accordance with this section shall not be deemed to affect any obligations or liabilities of the limited liability company incurred prior to such transfer or the personal liability of any person incurred prior to such transfer, nor shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising prior to such transfer."

Section 8. Amend Subchapter II, Chapter 18, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 18-214" to read as follows:

**"§ 18-214 Conversion of certain entities to a limited liability company.**

(a) As used in this section, the term "other entity" means a business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a partnership (whether general (including a registered limited liability partnership) or limited (including a registered limited liability limited partnership)) or a foreign limited liability company.

(b) Any other entity may convert to a domestic limited liability company by complying with subsection (h) of this section and filing in the Office of the Secretary of State in accordance with § 18-206 of this chapter:

(1) A certificate of conversion to limited liability company that has been executed by 1 or more authorized persons in accordance with § 18-204 of this chapter; and

(2) A certificate of formation that complies with § 18-201 of this chapter and has been executed by 1 or more authorized persons in accordance with § 18-204 of this chapter.

(c) The certificate of conversion to limited liability company shall state:

(1) The date on which and jurisdiction where the other entity was first created, formed, incorporated or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited liability company;

(2) The name of the other entity immediately prior to the filing of the certificate of conversion to limited liability company;

(3) The name of the limited liability company as set forth in its certificate of formation filed in accordance with subsection (b) of this section; and

(4) The future effective date or time (which shall be a date or time certain) of the conversion to a limited liability company if it is not to be effective upon the filing of the certificate of conversion to limited liability company and the certificate of formation.

(d) Upon the filing in the Office of the Secretary of State of the certificate of conversion to limited liability company and the certificate of formation or upon the future effective date or time of the certificate of conversion to limited liability company and the certificate of formation, the other entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding § 18-201 of this chapter, the existence of the limited liability company shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being.

(e) The conversion of any other entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited liability company, or the personal liability of any person incurred prior to such conversion.

(f) When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall be vested in the domestic limited liability company and shall thereafter be the property of the domestic limited liability company as they were of the other entity that has converted, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall thenceforth attach to the domestic limited liability company, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

(g) Unless otherwise agreed, or as required under applicable non-Delaware law, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity.

(h) Prior to filing a certificate of conversion to limited liability company with the Office of the Secretary of State, a limited liability company agreement shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate.

(i) The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, an other entity to the State of Delaware by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including by the amendment of a limited liability company agreement or other agreement."

Section 9. Amend Subchapter II, Chapter 18, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 18-215" to read as follows:

**"§18-215 Series of members, managers or limited liability company interests.**

(a) A limited liability company agreement may establish or provide for the establishment of designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and, to the extent provided in the limited liability company agreement, any such series may have a separate business purpose or investment objective.

(b) Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, in the event that a limited liability company agreement creates one or more series, and if separate and distinct records are maintained for any such series and the

assets associated with any such series are held and accounted for separately from the other assets of the limited liability company, or any other series thereof, and if the limited liability company agreement so provides, and notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the certificate of formation of the limited liability company, then the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally. The fact that a certificate of formation that contains the foregoing notice of the limitation on liabilities of a series is on file in the Office of the Secretary of State shall constitute notice of the limitation on liabilities of such series.

(c) Notwithstanding § 18-303(a) of this chapter, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of one or more series.

(d) A limited liability company agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the limited liability company agreement a class or group of the series of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

(e) A limited liability company agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group or any other basis.

(f) Unless otherwise provided in a limited liability company agreement, the management of a series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of the series owned by all of the members associated with such series, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided, however, that if a limited liability company agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager of the series shall also hold the offices and have the responsibilities accorded to him as set forth in a limited liability company agreement. A series may have more than 1 manager. Subject to §18-602 of this chapter, a manager shall cease to be a manager with respect to a series as provided in a limited liability company agreement. Except as otherwise provided in a limited liability company agreement, any event under this chapter or in a limited liability company agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(g) Notwithstanding § 18-606 of this chapter, but subject to subsections (h) and (k) of this section, and unless otherwise provided in a limited liability company agreement, at the time a member associated with a series that has been established in accordance with subsection (b) of this section becomes entitled to receive a distribution with respect to such

series, he has the status of, and is entitled to all remedies available to, a creditor of the series, with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

(h) Notwithstanding § 18-607(a) of this chapter, a limited liability company may make a distribution with respect to a series that has been established in accordance with subsection (b) of this section; provided that a limited liability company shall not make a distribution with respect to a series that has been established in accordance with subsection (b) of this section to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their limited liability company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. A member who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to a series for the amount of the distribution. A member who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to § 18-607(c) of this chapter, which shall apply to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(i) Unless otherwise provided in the limited liability company agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of his limited liability company interest with respect to such series. Except as otherwise provided in a limited liability company agreement, any event under this chapter or a limited liability company agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company.

(j) Subject to § 18-801 of this chapter, except to the extent otherwise provided in the limited liability company agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established in accordance with subsection (b) of this section shall not affect the limitation on liabilities of such series provided by subsection (b) of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under § 18-801 of this chapter or otherwise upon the first to occur of the following:

- (1) At the time specified in the limited liability company agreement;
- (2) Upon the happening of events specified in the limited liability company agreement;
- (3) Unless otherwise provided in the limited liability company agreement, upon the written consent of all members associated with such series; or
- (4) The termination of such series under subsection (l) of this section.

(k) Notwithstanding § 18-803(a) of this chapter, unless otherwise provided in the limited liability company agreement, a manager associated with a series who has not wrongfully terminated the series or, if none, the members associated with the series or a person approved by the members associated with the series or, if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the series owned by all of the

members associated with the series or by the members in each class or group associated with the series, as appropriate, may wind up the affairs of the series; but, if the series has been established in accordance with subsection (b) of this section, the Court of Chancery, upon cause shown, may wind up the affairs of the series upon application of any member associated with the series, his legal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and such series, take all actions with respect to the series as are permitted under §18-803(b) of this chapter. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in § 18-804(b) of this chapter and distribute the assets of the series as provided in § 18-804(a) of this chapter. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

(l) On application by or for a member or manager associated with a series established in accordance with subsection (b) of this section, the Court of Chancery may decree dissolution of such series whenever it is not reasonably practicable to carry on the business of the series in conformity with a limited liability company agreement.

(m) If a foreign limited liability company that is registering to do business in the State of Delaware in accordance with § 18-902 of this chapter is governed by a limited liability company agreement that establishes or provides for the establishment of designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on such application whether the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally."

Section 10. Amend Subchapter II, Chapter 18, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 18-216" to read as follows:

**"§ 18-216. Approval of conversion of a limited liability company.**

A domestic limited liability company may convert to a business trust or association, a real estate investment trust, a common-law trust, a general partnership (including a registered limited liability partnership) or a limited partnership (including a registered limited liability limited partnership), organized, formed or created under the laws of the State of Delaware, upon the authorization of such conversion in accordance with this section. If the limited liability company agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate."

Section 11. Amend § 18-302(a), Chapter 18, Title 6 of the Delaware Code by adding the following sentence at the end of said subsection:

"A limited liability company agreement may provide that any member or class or group of members shall have no voting rights."

Section 12. Amend § 18-305(f), Chapter 18, Title 6 of the Delaware Code by adding the following sentences immediately following the only sentence of said subsection:

"If the limited liability company refuses to permit a member to obtain or a manager to examine the information described in subsection (a)(3) of this section or does not reply to the demand that has been made within 5 business days after the demand has been made, the demanding member or manager may apply to the Court of Chancery for an order to compel such disclosure. The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought. The Court of Chancery may summarily order the limited liability company to permit the demanding member to obtain or manager to examine the information described in subsection (a)(3) of this section and to make copies or abstracts therefrom; or the Court of Chancery may summarily order the limited liability company to furnish to the demanding member or manager the information described in subsection (a)(3) of this section on the condition that the demanding member or manager first pay to the limited liability company the reasonable cost of obtaining and furnishing such information and on such other conditions as the Court of Chancery deems appropriate. When a demanding member seeks to obtain or a manager seeks to examine the information described in subsection (a)(3) of this section, the demanding member or manager shall first establish (1) that the demanding member or manager has complied with the provisions of this section respecting the form and manner of making demand for obtaining or examining of such information, and (2) that the information the demanding member or manager seeks is reasonably related to the member's interest as a member or the manager's position as a manager, as the case may be. The Court of Chancery may, in its discretion, prescribe any limitations or conditions with reference to the obtaining or examining of information, or award such other or further relief as the Court of Chancery may deem just and proper. The Court of Chancery may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the State of Delaware and kept in the State of Delaware upon such terms and conditions as the order may prescribe."

Section 13. Amend § 18-603, Chapter 18, Title 6 of the Delaware Code by inserting the word "only" immediately following the first usage of the words "from a limited liability company" in the first sentence thereof, by deleting the second and third sentences thereof in their entirety, and adding the following sentences at the end of § 18-603 to read as follows:

"Notwithstanding anything to the contrary under applicable law, unless a limited liability company agreement provides otherwise, a member may not resign from a limited liability company prior to the dissolution and winding up of the limited liability company. Notwithstanding anything to the contrary under applicable law, a limited liability company agreement may provide that a limited liability company interest may not be assigned prior to the dissolution and winding up of the limited liability company."

Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 1996, shall continue to be governed by 6 Del. C. § 18-603 as in effect on July 31, 1996, and shall not be governed by this section."

Section 14. Amend § 18-702(b), Chapter 18, Title 6 of the Delaware Code by redesignating paragraph "(1)" as paragraph "(2)", by redesignating paragraph "(2)" as paragraph "(3)", and by adding a new paragraph designated as paragraph "(1)" in its appropriate numerical order to read as follows:

"(1) An assignment of a limited liability company interest does not entitle the assignee to become or to exercise any rights or powers of a member;"

Section 15. Amend § 18-801, Chapter 18, Title 6 of the Delaware Code by deleting subsection (4) thereof in its entirety and by substituting in lieu thereof the following:

"(4) The death, retirement, resignation, expulsion, bankruptcy or dissolution of any member or only the member, members or class or classes or group or groups of members specified in the limited liability company agreement, or the occurrence of any other event that terminates the continued membership of any member, or only such member, members or class or classes or group or groups of members specified in the limited liability company agreement, unless the business of the limited liability company is continued (i) within 90 days following the occurrence of any such event either (A) by the vote or written consent of the percentage in interest of the members or class or classes or group or groups of members stated in the limited liability company agreement, or (B) if no such percentage is specified in the limited liability company agreement, by the vote or written consent of not less than a majority in interest of the remaining members, or (ii) pursuant to a right to continue stated in the limited liability company agreement; or"

Section 16. Amend § 18-1105(a)(3), Chapter 18, Title 6 of the Delaware Code by adding immediately after the words "Upon the receipt for filing of" the words "a certificate of limited liability company domestication under § 18-212 of this chapter, a certificate of transfer under § 18-213 of this chapter, a certificate of conversion to limited liability company under § 18-214 of this chapter,".

Section 17. This Act shall become effective August 1, 1996.

Approved June 10, 1996

## CHAPTER 361

### FORMERLY

#### HOUSE BILL NO. 529

#### AN ACT TO AMEND CHAPTER 15, TITLE 6 OF THE DELAWARE CODE RELATING TO THE REGISTRATION AND REGULATION OF FOREIGN REGISTERED LIMITED LIABILITY PARTNERSHIPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 1502, Chapter 15, Title 6 of the Delaware Code by adding the following new subsection "(4)", and by redesignating the subsequent subsections accordingly:

"(4) 'Foreign registered limited liability partnership' means a registered limited liability partnership or a limited liability partnership formed pursuant to an agreement governed by the laws of a jurisdiction other than this state and registered as such under the laws of such other jurisdiction."

Section 2. Amend § 1547, Chapter 15, Title 6 of the Delaware Code by adding the following new subsections "(c)" and "(d)":

"(c) Subject to any statutes for the regulation and control of specific types of businesses, foreign registered limited liability partnerships may transact business in this state and are not required to register with the Secretary of State under this Chapter.

(d) The internal affairs of foreign registered limited liability partnerships and the liability of partners for debts, obligations and liabilities of or chargeable to the foreign registered limited liability partnership or another partner or partners, shall be subject to and governed by the laws of the jurisdiction pursuant to the laws of which the foreign registered limited liability partnership is governed."

Section 3. This Act shall become effective on the date of enactment.

Approved June 10, 1996

## CHAPTER 362

## FORMERLY

## HOUSE BILL NO. 530

AN ACT TO AMEND CHAPTER 17, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED PARTNERSHIPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 17-203, Chapter 17, Title 6 of the Delaware Code by adding immediately prior to the punctuation mark "." at the end of the first sentence thereof, the words ", or upon the filing of a certificate of transfer".

Section 2. Amend § 17-204(a)(1), Chapter 17, Title 6 of the Delaware Code by adding immediately following the word "partnership" the words ", a certificate of limited partnership domestication, a certificate of conversion to limited partnership and a certificate of transfer".

Section 3. Amend § 17-206(a), Chapter 17, Title 6 of the Delaware Code by adding immediately following the words "any restated certificate" the words ", any certificate of conversion to limited partnership, any certificate of transfer, any certificate of limited partnership domestication,".

Section 4. Amend § 17-206(a)(1), Chapter 17, Title 6 of the Delaware Code by adding immediately following the words "restated certificate" the words ", the certificate of conversion to limited partnership, the certificate of transfer, the certificate of limited partnership domestication".

Section 5. Amend § 17-206(b), Chapter 17, Title 6 of the Delaware Code by adding immediately following the first usage of the words "acts as a certificate of cancellation," in the second sentence of said subsection, the words "or a certificate of transfer," by adding immediately following the second usage of the words "acts as a certificate of cancellation," in the second sentence of said subsection, the words "or a certificate of transfer," and by adding the following sentences immediately following the second sentence of said subsection:

"Upon the filing of a certificate of limited partnership domestication, or upon the future effective date or time of a certificate of limited partnership domestication, the entity filing the certificate of limited partnership domestication is domesticated as a limited partnership with the effect provided in § 17-215 of this title. Upon the filing of a certificate of conversion to limited partnership, or upon the future effective date or time of a certificate of conversion to limited partnership, the entity filing the certificate of conversion to limited partnership is converted to a limited partnership with the effect provided in § 17-217 of this title."

Section 6. Amend § 17-206(c), Chapter 17, Title 6 of the Delaware Code by adding immediately following the words "a restated certificate" the words ", a certificate of conversion to limited partnership, a certificate of transfer, a certificate of limited partnership domestication".

Section 7. Amend § 17-207(a), Chapter 17, Title 6 of the Delaware Code by adding immediately following the word "cancellation" the words "or certificate of conversion to limited partnership, certificate of transfer or certificate of limited partnership domestication".

Section 8. Amend § 17-208, Chapter 17, Title 6 of the Delaware Code by adding immediately prior to the punctuation mark "." at the end of the only sentence of said section

the words "and which are permitted to be set forth in a certificate of limited partnership by § 17-218(b) of this title"

Section 9. Amend § 17-211(c)(7), Chapter 17, Title 6 of the Delaware Code by adding thereto immediately following the word "corporation" the words ", or limited liability company", and by adding immediately following the words "under the laws of the State of Delaware," the words "or a business trust organized under 12 Del. C., Ch. 38,".

Section 10. Amend Subchapter II, Chapter 17, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 17-215" to read as follows:

**"§ 17-215. Domestication of non-United States entities.**

(a) As used in this section, "non-United States entity" means a foreign limited partnership (other than one formed under the laws of a state) (including a foreign registered limited liability limited partnership (other than one formed under the laws of a state)), or a corporation, a business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a general partnership (including a registered limited liability partnership) or a limited liability company, formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

(b) Any non-United States entity may become domesticated as a limited partnership in the State of Delaware by complying with subsection (g) of this section and filing in the Office of the Secretary of State in accordance with § 17-206 of this title:

(1) A certificate of limited partnership domestication that has been executed in accordance with § 17-204 of this title; and

(2) A certificate of limited partnership that complies with § 17-201 of this title and has been executed in accordance with § 17-204 of this title.

(c) The certificate of limited partnership domestication shall state:

(1) The date on which and jurisdiction where the non-United States entity was first formed, incorporated, created or otherwise came into being;

(2) The name of the non-United States entity immediately prior to the filing of the certificate of limited partnership domestication;

(3) The name of the limited partnership as set forth in the certificate of limited partnership filed in accordance with subsection (b) of this section;

(4) The future effective date or time (which shall be a date or time certain) of the domestication as a limited partnership if it is not to be effective upon the filing of the certificate of limited partnership domestication and the certificate of limited partnership; and

(5) The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-United States entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of limited partnership domestication.

(d) Upon the filing in the Office of the Secretary of State of the certificate of limited partnership domestication and the certificate of limited partnership or upon the future effective date or time of the certificate of limited partnership domestication and the certificate of limited partnership, the non-United States entity shall be domesticated as a limited partnership in the State of Delaware and the limited partnership shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding § 17-201 of this title, the existence of the limited partnership shall be deemed to have commenced on the date the non-United States entity commenced its existence in the jurisdiction in which the non-United States entity was first formed, incorporated, created or otherwise came into being.

(e) The domestication of any non-United States entity as a limited partnership in the State of Delaware shall not be deemed to affect any obligations or liabilities of the non-United States entity incurred prior to its domestication as a limited partnership in the State of Delaware, or the personal liability of any person therefor.

(f) The filing of a certificate of limited partnership domestication shall not affect the choice of law applicable to the non-United States entity, except that from the effective date or time of the domestication, the law of the State of Delaware, including the provisions of this chapter, shall apply to the non-United States entity to the same extent as if the non-United States entity had been formed as a limited partnership on that date.

(g) Prior to filing a certificate of limited partnership domestication with the Office of the Secretary of State, a partnership agreement shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate; provided that, in any event, such approval shall include the approval of any person who, at the effective date or time of the domestication, shall be a general partner of the limited partnership.

(h) When any domestication shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the non-United States entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-United States entity, as well as all other things and causes of action belonging to such non-United States entity, shall be vested in the domestic limited partnership and shall thereafter be the property of the domestic limited partnership as they were of the non-United States entity immediately prior to its domestication, and the title to any real property vested by deed or otherwise in such non-United States entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such non-United States entity shall be preserved unimpaired, and all debts, liabilities and duties of the non-United States entity that has been domesticated shall thenceforth attach to the domestic limited partnership, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by the domestic limited partnership."

Section 11. Amend Subchapter II, Chapter 17, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 17-216" to read as follows:

**"§ 17-216. Transfer and continuance of domestic limited partnerships.**

(a) Upon compliance with the provisions of this section, any limited partnership may transfer to any jurisdiction, other than any state, that permits the transfer to or domestication or continuance in such jurisdiction of a limited partnership.

(b) Notwithstanding anything to the contrary in this chapter or a partnership agreement, the transfer described in subsection (a) of this section shall be approved in writing by all of the partners. If all of the partners of the limited partnership shall approve the transfer described in subsection (a) of this section, a certificate of transfer, executed in accordance with § 17-204 of this title, shall be filed in the Office of the Secretary of State in accordance with § 17-206 of this title. The certificate of transfer shall state:

(1) The name of the limited partnership and, if it has been changed, the name under which it was originally filed;

(2) The date of the filing of its original certificate of limited partnership with the Secretary of State;

(3) The jurisdiction to which the limited partnership will transfer;

(4) The future effective date or time (which shall be a date or time certain) of the transfer to the jurisdiction specified in subsection (b)(3) of this section if it is not to be effective upon the filing of the certificate of transfer;

(5) That the transfer of the limited partnership has been approved in accordance with the provisions of this section;

(6) The agreement of the limited partnership that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the limited partnership arising while it was a limited partnership of the State of Delaware, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding; and

(7) The address to which a copy of the process referred to in subsection (b)(6) of this section shall be mailed to it by the Secretary of State. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 17-911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the limited partnership that has transferred out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 17-911(c) of this title.

(c) Upon the filing in the Office of the Secretary of State of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Secretary of State of all fees prescribed in this chapter, the Secretary of State shall certify that the limited partnership has filed all documents and paid all fees required by this chapter, and thereupon the limited partnership shall cease to exist as a limited partnership of the State of Delaware. Such certificate of the Secretary of State shall be *prima facie* evidence of the transfer by such limited partnership out of the State of Delaware.

(d) The transfer of a limited partnership out of the State of Delaware in accordance with this section shall not be deemed to affect any obligations or liabilities of the limited partnership incurred prior to such transfer or the personal liability of any person incurred prior to such transfer, nor shall it be deemed to affect the choice of law applicable to the limited partnership with respect to matters arising prior to such transfer."

Section 12. Amend Subchapter II, Chapter 17, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 17-217" to read as follows:

**"§ 17-217 Conversion of certain entities to a limited partnership.**

(a) As used in this section, the term "other entity" means a business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a general partnership (including a registered limited liability partnership) or a foreign limited partnership (including a foreign registered limited liability limited partnership) or a limited liability company.

(b) Any other entity may convert to a domestic limited partnership by complying with subsection (h) of this section and filing in the Office of the Secretary of State in accordance with § 17-206 of this title:

(1) A certificate of conversion to limited partnership that has been executed in accordance with § 17-204 of this title; and

(2) A certificate of limited partnership that complies with § 17-201 of this title and has been executed in accordance with § 17-204 of this title.

(c) The certificate of conversion to limited partnership shall state:

(1) The date on which and jurisdiction where the other entity was first created, formed, incorporated or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited partnership;

(2) The name of the other entity immediately prior to the filing of the certificate of conversion to limited partnership;

(3) The name of the limited partnership as set forth in its certificate of limited partnership filed in accordance with subsection (b) of this section; and

(4) The future effective date or time (which shall be a date or time certain) of the conversion to a limited partnership if it is not to be effective upon the filing of the certificate of conversion to limited partnership and the certificate of limited partnership.

(d) Upon the filing in the Office of the Secretary of State of the certificate of conversion to limited partnership and the certificate of limited partnership or upon the future effective date or time of the certificate of conversion to limited partnership and the certificate of limited partnership, the other entity shall be converted into a domestic limited partnership and the limited partnership shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding § 17-201 of this title, the existence of the limited partnership shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being.

(e) The conversion of any other entity into a domestic limited partnership shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited partnership, or the personal liability of any person incurred prior to such conversion.

(f) When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall be vested in the domestic limited partnership and shall thereafter be the property of the domestic limited partnership as they were of the other entity that has converted, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall thenceforth attach to the domestic limited partnership, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

(g) Unless otherwise agreed, or as required under applicable non-Delaware law, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity.

(h) Prior to filing a certificate of conversion to limited partnership with the Office of the Secretary of State, a partnership agreement shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate; provided that, in any event, such approval shall include the approval of any person who, at the effective date or time of the conversion, shall be a general partner of the limited partnership.

(i) The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, an other entity to the State of Delaware by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including by the amendment of a partnership agreement or other agreement."

Section 13. Amend Subchapter II, Chapter 17, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 17-218" to read as follows:

**"§17-218 Series of limited partners or partnership interests.**

(a) A partnership agreement may establish or provide for the establishment of designated series of limited partners or partnership interests having separate rights, powers or duties with respect to specified property or obligations of the limited partnership or profits and losses associated with specified property or obligations, and, to the extent provided in the partnership agreement, any such series may have a separate business purpose or investment objective.

(b) Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, in the event that a partnership agreement creates one or more series, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held and accounted for separately from the other assets of the limited partnership, or any other series thereof, and if the partnership agreement so provides, and notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the certificate of limited partnership, then the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable only against the assets of such series and not against the assets of the limited partnership generally.

(c) The fact that a certificate of limited partnership that contains the notice of the limitation on liabilities of a series referenced in subsection (b) of this section is on file in the Office of the Secretary of State shall constitute notice of such limitation on liabilities of a series.

(d) A limited partner may possess or exercise any of the rights and powers or act or attempt to act in 1 or more of the capacities as permitted under § 17-303 of this title, with respect to any series, without participating in the control of the business of the limited partnership or with respect to any series thereof within the meaning of § 17-303(a) of this title. A partnership agreement may provide for classes or groups of general partners or limited partners associated with a series having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of general partners or limited partners associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of general partners or limited partners associated with the series. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any general partner or limited partner or class or group of general partners or limited partners, including an action to create under the provisions of the partnership agreement a class or group of the series of partnership interests that was not previously outstanding.

(e) A partnership agreement may grant to all or certain identified general partners or limited partners or a specified class or group of the general partners or limited partners associated with a series the right to vote separately or with all or any class or group of the general partners or limited partners associated with the series, on any matter. Voting by general partners or limited partners associated with a series may be on a per capita, number, financial interest, class, group or any other basis.

(f) Section 17-603 of this title shall apply to a limited partner with respect to any series with which the limited partner is associated. Except as otherwise provided in a partnership agreement, any event under this subsection or in a partnership agreement that causes a limited partner to cease to be associated with a series shall not, in itself, cause such limited partner to cease to be associated with any other series or to be a limited partner of the limited partnership. A limited partner shall cease to be a limited partner with respect to a series and to have the power to exercise any rights or powers of a limited partner with respect to such series upon the happening of either of the following events:

(1) The limited partner withdraws with respect to the series in accordance with § 17-603 of this title; or

(2) Except as otherwise provided in the partnership agreement, the limited partner assigns all of his partnership interest with respect to the series.

(g) Notwithstanding § 17-606 of this title, but subject to subsections (h) and (j) of this section, and unless otherwise provided in a partnership agreement, at the time a partner associated with a series that has been established in accordance with subsection (b) of this section becomes entitled to receive a distribution with respect to such series, he has the status of, and is entitled to all remedies available to, a creditor of the series, with respect to the distribution. A partnership agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

(h) Notwithstanding § 17-607(a) of this title, a limited partnership may make a distribution with respect to a series that has been established in accordance with subsection (b) of this section; provided that a limited partnership shall not make a distribution with respect to a series that has been established in accordance with subsection (b) of this section to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to partners on account of their partnership interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. A limited partner who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to a series for the amount of the distribution. A limited partner who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to § 17-607(c) of this title, which shall apply to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a limited partner under an agreement or other applicable law for the amount of a distribution.

(i) Subject to § 17-801 of this title, except to the extent otherwise provided in the partnership agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited partnership. The termination of a series established in accordance with subsection (b) of this section shall not affect the limitation on liabilities of such series provided by subsection (b) of this section.

(j) Notwithstanding § 17-803(a) of this title, unless otherwise provided in the partnership agreement, a general partner associated with a series who has not wrongfully terminated the series or, if none, the limited partners associated with the series or a person approved by the limited partners associated with the series or, if there is more than one class or group of limited partners associated with the series, then by each class or group of limited partners associated with the series, in either case, by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the series owned by all of the limited partners associated with the series or by the limited partners in each class or group associated with the series, as appropriate, may wind up the affairs of the series; but, if the series has been established in accordance with subsection (b) of this section, the Court of Chancery, upon cause shown, may wind up the affairs of the series upon application of any partner associated with the series, his legal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a series may, in the name of the limited partnership and for and on behalf of the limited partnership and such series, take all actions with respect to the series as are permitted under § 17-803(b) of this title. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in § 17-804(b) of this title and distribute the assets of the series as provided in § 17-804(a) of this title. Actions taken in accordance with this subsection shall not affect the liability of limited partners and shall not impose liability on a liquidating trustee.

(k) On application by or for a partner associated with a series established in accordance with subsection (b) of this section, the Court of Chancery may decree dissolution of such series whenever it is not reasonably practicable to carry on the business of the series in conformity with a partnership agreement."

Section 14. Amend Subchapter II, Chapter 17, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 17-219" to read as follows:

**"§ 17-219 Approval of conversion of a limited partnership.**

A domestic limited partnership may convert to a business trust or association, a real estate investment trust, a common-law trust, a general partnership (including a registered limited liability partnership) or a limited liability company, organized, formed or created under the laws of the State of Delaware, upon the authorization of such conversion in accordance with this section. If the partnership agreement specifies the manner of authorizing a conversion of the limited partnership, the conversion shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership and does not prohibit a conversion of the limited partnership, the conversion shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the limited partnership as a constituent party to the merger or consolidation. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership or a merger or consolidation that involves the limited partnership as a constituent party and does not prohibit a conversion of the limited partnership, the conversion shall be authorized by the approval (1) by all general partners, and (2) by the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate."

Section 15. Amend § 17-305(e), Chapter 17, Title 6 of the Delaware Code by adding the following sentences immediately following the only sentence of said subsection:

"If a general partner refuses to permit a limited partner to obtain from the general partner the information described in subsection (a)(3) of this section or does not reply to the demand that has been made within 5 business days after the demand has been made, the limited partner may apply to the Court of Chancery for an order to compel such disclosure. The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought. The Court of Chancery may summarily order the general partner to permit the limited partner to obtain the information described in subsection (a)(3) of this section and to make copies or abstracts therefrom; or the Court of Chancery may summarily order the general partner to furnish to the limited partner the information described in subsection (a)(3) of this section on the condition that the limited partner first pay to the limited partnership the reasonable cost of obtaining and furnishing such information and on such other conditions as the Court of Chancery deems appropriate. When a limited partner seeks to obtain the information described in subsection (a)(3) of this section, the limited partner shall first establish (1) that the limited partner has complied with the provisions of this section respecting the form and manner of making demand for obtaining such information, and (2) that the information the limited partner seeks is reasonably related to the limited partner's interest as a limited partner. The Court of Chancery may, in its discretion, prescribe any limitations or conditions with reference to the obtaining of information, or award such other or further relief as the Court of Chancery may deem just and proper. The Court of Chancery may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the State of Delaware and kept in the State of Delaware upon such terms and conditions as the order may prescribe."

Section 16. Amend § 17-603, Chapter 17, Title 6 of the Delaware Code by inserting the word "only" immediately following the words "from a limited partnership" in the first

sentence thereof, by deleting the second and third sentences of § 17-603 in their entirety, and by adding the following sentences at the end of the subsection:

"Notwithstanding anything to the contrary under applicable law, unless a partnership agreement provides otherwise, a limited partner may not withdraw from a limited partnership prior to the dissolution and winding up of the limited partnership. Notwithstanding anything to the contrary under applicable law, a partnership agreement may provide that a partnership interest may not be assigned prior to the dissolution and winding up of the limited partnership.

Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 1996, shall continue to be governed by 6 Del. C. § 17-603 as in effect on July 31, 1996, and shall not be governed by this section."

Section 17. Amend § 17-1107(a)(3), Chapter 17, Title 6 of the Delaware Code by adding immediately after the words "Upon the receipt for filing of" the words "a certificate of limited partnership domestication under § 17-215 of this title, a certificate of transfer under § 17-216 of this title, a certificate of conversion to limited partnership under § 17-217 of this title."

Section 18. This Act shall become effective August 1, 1996.

Approved June 10, 1996

## CHAPTER 363

### FORMERLY

#### HOUSE BILL NO. 540

AN ACT TO AMEND CHAPTER 515, VOLUME 60, LAWS OF DELAWARE ENTITLED "AN ACT TO INCORPORATE THE VILLAGE OF ARDENCROFT;" AS AMENDED, TO PROVIDE FOR A QUORUM OF FOURTEEN (14) ELIGIBLE VOTERS OF THE TOWN MEETING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Subsection (c), Section 5, Chapter 515, Volume 60, Laws of Delaware, by striking the word "twenty (20)" and substituting in lieu thereof the word "fourteen (14)."

Approved June 10, 1996

## CHAPTER 364

## FORMERLY

## HOUSE BILL NO. 478

## AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE CRIME OF THEFT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend paragraphs (1) and (2) of § 841(c) of Title 11 of the Delaware Code by striking the text "\$500" each time it appears in said paragraphs, and by replacing it with the text "\$1,000".

Section 2. Amend § 841(c) of Title 11 of the Delaware Code by adding a new paragraph to read:

"(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection:

(A) Where the value of the property received, retained or disposed of is more than \$50,000 but less than \$100,000, theft is a class E felony;

(B) Where the value of the property received, retained or disposed of is

\$100,000 or more, theft is a class C felony."

Approved June 10, 1996

## CHAPTER 365

## FORMERLY

SENATE BILL NO. 276  
AS AMENDED BY SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SCHOOL  
CALENDARS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1: Amend § 122(b)(10), Title 14, Delaware Code by deleting said section in its entirety and by replacing it with a new § 122(b)(10), Title 14, Delaware Code to read as follows:

"(10) Determining the days on which the schools are closed or days are abbreviated by the authority of the local board for such reasons as storms, necessary repairs, quarantine, destruction of school property by fire or other causes. Under the above conditions, the employees shall suffer no loss of pay and the total number of hours required by §1049(1) of this title may be adjusted accordingly;"

Section 2: Amend § 1049, Title 14, Delaware Code by renumbering the existing paragraphs (1) through (8) as paragraphs (2) through (9) and by adding a new paragraph (1) thereto to read as follows:

"(1) Determine the hours of daily school sessions, the holidays which the district schools shall be closed, and the days on which teachers attend educational improvement activities. This authority is subject to the requirement that all duly adopted district school calendars must provide for at least 180 days of pupil attendance for grades 1 through 12 and 176 days for kindergarten students. In preparing a local school calendar, districts may abbreviate up to four (4) days per semester to provide for parent-teacher conferences, curriculum development, semester examinations, or other school improvement activities. Except for the first and last days of the school year, any such abbreviated day shall be at least three and one-half (3 1/2) hours exclusive of lunch and shall not be scheduled on the school day preceding a scheduled holiday. Morning and afternoon sessions of kindergarten shall be alternated on such abbreviated days. In the case of regular school days, for grades 1 through 12 the length of the day shall be at least six hours exclusive of lunch periods; provided that a district may schedule days with fewer than six hours so long as the total scheduled hours of instruction do not fall below 1,060. The actual hours of instruction may be less than 1,060 hours due to unplanned delays or early dismissals of not more than two hours in each instance which are caused by weather or other unforeseen emergency circumstances. All district calendars shall be adopted by April 30th for the ensuing school year and may only be amended following 30 days' public notice."

Section 3. This bill shall be effective July 1, 1996.

Approved June 14, 1996

CHAPTER 364  
FORMERLY  
HOUSE BILL NO. 478

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE CRIME OF THEFT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend paragraphs (1) and (2) of § 841(c) of Title 11 of the Delaware Code by striking the text "\$500" each time it appears in said paragraphs, and by replacing it with the text "\$1,000".

Section 2. Amend § 841(c) of Title 11 of the Delaware Code by adding a new paragraph to read:

"(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection:

(A) Where the value of the property received, retained or disposed of is more than \$50,000 but less than \$100,000, theft is a class E felony;

(B) Where the value of the property received, retained or disposed of is

\$100,000 or more, theft is a class C felony."

Approved June 10, 1996

## CHAPTER 365

## FORMERLY

SENATE BILL NO. 276  
AS AMENDED BY SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SCHOOL  
CALENDARS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1: Amend § 122(b)(10), Title 14, Delaware Code by deleting said section in its entirety and by replacing it with a new § 122(b)(10), Title 14, Delaware Code to read as follows:

"(10) Determining the days on which the schools are closed or days are abbreviated by the authority of the local board for such reasons as storms, necessary repairs, quarantine, destruction of school property by fire or other causes. Under the above conditions, the employees shall suffer no loss of pay and the total number of hours required by §1049(1) of this title may be adjusted accordingly;"

Section 2: Amend § 1049, Title 14, Delaware Code by renumbering the existing paragraphs (1) through (8) as paragraphs (2) through (9) and by adding a new paragraph (1) thereto to read as follows:

"(1) Determine the hours of daily school sessions, the holidays which the district schools shall be closed, and the days on which teachers attend educational improvement activities. This authority is subject to the requirement that all duly adopted district school calendars must provide for at least 180 days of pupil attendance for grades 1 through 12 and 176 days for kindergarten students. In preparing a local school calendar, districts may abbreviate up to four (4) days per semester to provide for parent-teacher conferences, curriculum development, semester examinations, or other school improvement activities. Except for the first and last days of the school year, any such abbreviated day shall be at least three and one-half (3 1/2) hours exclusive of lunch and shall not be scheduled on the school day preceding a scheduled holiday. Morning and afternoon sessions of kindergarten shall be alternated on such abbreviated days. In the case of regular school days, for grades 1 through 12 the length of the day shall be at least six hours exclusive of lunch periods; provided that a district may schedule days with fewer than six hours so long as the total scheduled hours of instruction do not fall below 1,060. The actual hours of instruction may be less than 1,060 hours due to unplanned delays or early dismissals of not more than two hours in each instance which are caused by weather or other unforeseen emergency circumstances. All district calendars shall be adopted by April 30th for the ensuing school year and may only be amended following 30 days' public notice."

Section 3. This bill shall be effective July 1, 1996.

Approved June 14, 1996

## CHAPTER 366

## FORMERLY

SENATE BILL NO. 277  
AS AMENDED BY SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SATELLITE  
SCHOOLS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, the State of Delaware is committed to providing public school students with a variety of quality educational opportunities; and

WHEREAS, among those opportunities should be learning environments that are located close to where public school parents work through so-called "satellite schools"; and

WHEREAS, satellite schools recognize the reality that most public school parents participate in the workforce and that locating schools on or adjacent to workplaces may increase parental involvement, reduce transportation costs, diminish absenteeism, and provide more cost-effective access to before- and after-school child care; and

WHEREAS, locating schools at workplaces can benefit employers by reducing the need for working parents to leave work for school- and child-care related reasons, by improving the morale of working parents, and by improving the quality of our public school system and the workers it produces; and

WHEREAS, the cost of building public schools is very substantial and is expected to cost state and local taxpayers well over \$300,000,000 this decade alone, due to the aging of school buildings, burgeoning student enrollments, and shifting demographics; and

WHEREAS, satellite schools can benefit students and taxpayers, by providing quality educational environments for students at lower costs and by reducing traffic congestion because parents and students can travel to their work and school destinations together; and

WHEREAS, satellite schools can be a source of safe and affordable physical space for charter and magnet schools; and

WHEREAS, the State of Delaware should empower its local school districts to enter into satellite school agreements with employers whereby employers will provide physical facilities for the operation of public schools.

NOW, THEREFORE, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

SECTION 1: Amend Chapter 20, Title 14, Delaware Code by adding a new § 2005 thereto to read as follows:

"§ 2005. Satellite Schools.

(a) Reorganized school districts and charter schools authorized pursuant to Chapter 5 of this title are authorized to enter into satellite school agreements pursuant to this section. For purposes of this section, a "satellite school" is defined as a public school that operates in physical facilities leased from, donated by, or located on property that is owned or leased by a private sector or governmental employer which is not the school district or charter school operating the satellite school.

(b) The State Board of Education shall promulgate rules and regulations for the approval of satellite school agreements. Such rules and regulations shall ensure that the physical facilities in which satellite schools operate are sufficient to protect the health and safety of the students who attend such schools, but shall not require that those physical facilities meet the

same requirements established by the State Board pursuant to § 2002 of this chapter for schools constructed and owned by reorganized districts. The State Risk Manager shall provide assistance to the State Board in establishing regulations governing the respective obligations of the school district or the charter school operating the satellite school and the employer(s) providing the physical facility for the operation of the satellite school for any liabilities that may be incurred pursuant to a separate provision of this Code or other provision of law. Satellite schools and their employees shall have the same immunities from liability as other public schools and their employees.

(c) Reorganized districts shall establish procedures for admissions to non-charter school satellite schools consistent with those established by Chapter 4 of this title and charter schools shall establish procedures for admissions to satellite schools consistent with those established by Chapter 5 of this title; provided, however, that preference in admissions to satellite schools may also be given to students whose parents are residents of the state and who work at the worksite at which the satellite facility is located so long as such preference is made equally available to such students without regard to the jobs their parents hold at the worksite or without regard to whether the students' parents work for the employer who controls the worksite or a contractor of such employer. Such preference may also be extended to students whose parents work at a physical facility located within a one-mile radius of the satellite school for an employer or the contractor of any employer, which is a party to a satellite school agreement with a reorganized district and which provides assistance pursuant to such agreement in the provision of the physical facility for the operation of the satellite school."

Approved June 14, 1996

## CHAPTER 367

## FORMERLY

HOUSE BILL NO. 293

AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 7, TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYMENT PRACTICES; AND PROVIDING FOR A QUALITY IN HIRING ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter I, Chapter 7, Title 19 of the Delaware Code by adding thereto a new section, designated at § 708, which new section shall read as follows:

"§ 708. Employment Information.

(a) An employer or any person employed by the employer who discloses information about a current or former employee's job performance to a prospective employer is presumed to be acting in good faith; and unless lack of good faith is shown, is immune from civil liability for such disclosure or its consequences. For purposes of this section, the presumption of good faith may be rebutted upon a showing that the information disclosed by such employer was knowingly false, was deliberately misleading or was rendered with malicious purpose; or that the information was disclosed in violation of a nondisclosure agreement, or was otherwise confidential according to applicable federal, State, or local statute, rule or regulation.

(b) For purposes of this section, the word 'information' includes:

- (1) information about an employee's or former employee's job performance or work-related characteristics;
- (2) any act committed by such employee which would constitute a violation of federal, State or local law; or
- (3) an evaluation of the ability or lack of ability of such employee or former employee to accomplish or comply with the duties or standards of the position held by such employee or former employee."

Section 2. This Act shall be known as, and may be cited as the "Quality in Hiring Act."

Approved June 17, 1996

## CHAPTER 368

## FORMERLY

HOUSE BILL NO. 216

AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 14 OF TITLE 30 OF THE DELAWARE CODE RELATING TO TAX RETURNS FOR GIFT TAXES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Amend § 1405(a), Chapter 14, Title 30 of the Delaware Code by deleting therefrom the word "15th" and substituting in lieu thereof the word "30th".

Approved June 17, 1996

CHAPTER 369

FORMERLY

HOUSE BILL NO. 252  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 & 2 AND  
SENATE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE REGARDING DRIVING  
VEHICLES WHILE LICENSE IS SUSPENDED OR REVOKED.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend § 2756, Chapter 21, Title 21 of the Delaware Code by striking subsections (a) and (b), and by inserting new subsections in place thereof to read:

“(a) Any person whose driver’s license or driving privileges have been suspended or revoked and who drives any motor vehicle upon the highways of this State during the period of suspension or revocation shall for the first offense be fined not less than \$500.00 nor more than \$1,000.00 and be imprisoned not less than 30 days nor more than 6 months. For each subsequent like offense, such person shall be fined not less than \$1,000.00 nor more than \$4,000.00 and in addition be imprisoned not less than 60 days nor more than 1 year. However, for a first offense under this section, if the suspension or revocation resulted from a violation of § 4177 of this Title or a local ordinance substantially conforming thereto, the minimum fine shall be \$600.00. For purposes of this section a subsequent offense shall be defined as one occurring within 3 years of a former offense.

(b) The minimum fine for a first or subsequent offense shall not be subject to suspension. The period of imprisonment for a subsequent offense shall not be subject to suspension. In addition, for any offense under this section, if the suspension or revocation resulted from a violation of a criminal statute dealing with injury or death caused to another person by the person’s driving or operation of the vehicle and driving under the influence was an element of such offense, the minimum fine shall be \$2,000.00 and the minimum period of imprisonment shall not be subject to suspension.”

Approved June 17, 1996

## CHAPTER 370

## FORMERLY

## HOUSE BILL NO. 445

## AN ACT TO AMEND CHAPTER 51, TITLE 6 OF THE DELAWARE CODE RELATING TO WEIGHTS AND MEASURES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 5101(2), Chapter 51, Title 6 of the Delaware Code by deleting it in its entirety and substituting in lieu thereof the following:

“(2) The words ‘weight(s) and (or) measure(s)’ mean any weight or measure or weighing or measuring device commercially used or employed in establishing size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption which are purchased, offered, or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered and shall also include any accessory attached to or used in connection with a commercial weighing device when such accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device. This term shall not be construed to include meters for the measurement of electricity, gas (natural or manufactured), telephone service, or water when the same are operated in a public utility system. Such electricity, gas, telephone, and water meters are specifically excluded from the purview of this chapter, and none of the provisions of this chapter shall apply to such meters or to any appliances or accessories associated therewith.”

Section 2. Further amend § 5101, Chapter 51, Title 6 of the Delaware Code by adding thereto a new subsection, designated as subsection (9), that shall read as follows:

“(9) A ‘Certificate of Conformance’ means a document issued by the National Institute of Standards and Technology based on testing in participating laboratories that indicates that the weights and measures or weighing and measuring devices(s) conform with the requirements of National Institute of Standards and Technology Handbook 44 and supplements thereto, or in any publication superseding these publications.”

Section 3. Further amend § 5101, Chapter 51, Title 6 of the Delaware Code by adding thereto a new subsection, designated as subsection (10), that shall read as follows:

“(10) Ready-to-Eat Food is restaurant-style food offered or exposed for sale, whether in restaurants, supermarkets, or similar food service establishments, that is ready for consumption, though not necessarily on the premises where sold. Ready-to-Eat Food does not include sliced luncheon products, such as meat, poultry, or cheese when sold separately.”

Section 4. Amend § 5102, Chapter 51, Title 6 of the Delaware Code by deleting the words “National Bureau of Standards” as they appear in the second sentence of the subsection and replacing them with the words “National Institute of Standards and Technology”.

Section 5. Amend § 5104, Chapter 51, Title 6 of the Delaware Code by deleting the words “National Bureau of Standards” as they appear in the first sentence of the subsection and replace them with the words “National Institute of Standards and Technology”.

Section 6. Amend § 5105, Chapter 51, Title 6 of the Delaware Code by adding the following final sentence to the section:

“The specifications and tolerances for reference standard and field standard weights and measures shall be those as specified in Handbooks 105-1, 105-2, and 105-3

of the National Institute of Standards and Technology and supplements thereto, or in any publication superseding these publications.”

Section 7. Amend § 5107, Chapter 51, Title 6 of the Delaware Code by deleting the final sentence in the section and substituting in lieu thereof the following:

“For the purposes of this Chapter, apparatus shall be deemed to be ‘correct,’ when it conforms to the requirements of the National Type Evaluation Program of the National Institute of Standards and Technology. A Certificate of Conformance must be issued prior to the use of such weight(s) and measure(s) or weighing and measuring device for commercial or law enforcement purposes, except insofar as specifically modified, amended, or rejected by a regulation issued by the Secretary of Agriculture. Pending the issuance of a Certificate of Conformance, the Department may permit such weight(s) and measure(s) or weighing and measuring device to be used provided it meets the specifications and tolerances for that particular weight and measure or weighing device as set forth in the National Institute of Standards and Technology Handbook 44.”

Section 8. Amend § 5120, Chapter 51, Title 6 of the Delaware Code by deleting said section in its entirety and substituting in lieu thereof the following:

“§ 5120. Uniform packaging and labeling.

The standards and requirements for Uniform Packaging and Labeling will be those contained in Handbook 130 of the National Institute of Standards and Technology and supplements thereto, or in any publication revising or superseding Handbook 130, except insofar as specifically modified, amended, or rejected by a regulation issued by the Secretary.”

Section 9. Amend § 5123, Chapter 51, Title 6 of the Delaware Code by adding thereto a new final sentence to read as follows:

“The procedures used for price verification shall be those recommended by the National Institute of Standards and Technology in the Examination Procedure for Price Verification in Handbook 130 and supplements thereto, or in any publication superseding these publications.”

Section 10. Amend § 5124, Chapter 51, Title 6 of the Delaware Code by deleting said section in its entirety and substituting in lieu thereof the following:

“§ 5124. Meat, poultry and seafood.

Meat, poultry and seafood shall be sold by weight, except that whole shellfish in the shell and ready to eat food may be sold by weight, measure, and/or count.”

Section 11. Amend § 5125, Chapter 51, Title 6 of the Delaware Code by deleting said section in its entirety and substituting in lieu thereof the following:

“§ 5125. Clams, Mussels, Oysters, and other Mollusks.

Whole clams, oysters, mussels, or other mollusks in the shell, whether fresh or frozen, shall be sold by weight including the weight of the shell, but not including the liquid of ice packed with them, dry measure, and/or count. In addition, size designations may be provided. Fresh oysters removed from the shell shall be sold by weight or by fluid volume. For oysters sold by weight or by volume, a maximum of 15 percent free liquid by weight is permitted.”

Section 12. Amend § 5126, Chapter 51, Title 6 of the Delaware Code by deleting said section in its entirety and renumbering the remaining sections accordingly.

Section 13. Amend § 5127, Chapter 51, Title 6 of the Delaware Code by deleting said section in its entirety and substituting in lieu thereof the following:

"§ 5127. Non-Food Products.

The specifications and requirements for non-food products shall be those specified by the National Institute of Standards and Technology, Handbook 130 and supplements thereto, or in any publication revising or superseding Handbook 130, except insofar as specifically modified, amended, or rejected by a regulation issued by the Secretary of Agriculture."

Section 14. Amend § 5129(a), Chapter 51, Title 6 of the Delaware Code by adding a new sentence to the end of the subsection to read as follows:

"The number printed on the delivery ticket that is presented to the purchaser of the fuel oil or propane shall be listed on the records kept by the individual or company that sells or delivers the fuel oil or propane."

Section 15. Amend § 5133, Chapter 51, Title 6 of the Delaware Code by striking "\$20" as it appears in that section and replacing it with "\$100" and by striking "\$200" as it appears in that section and replacing it with "\$500".

Section 16. Further amend § 5135(b), Chapter 51, Title 6 of the Delaware Code by deleting said section in its entirety and substituting in lieu thereof the following:

"(b) Any person who, by himself or herself or by his or her employee or agent or as the employee or agent of another person, performs any one of the acts enumerated in paragraphs (1)-(9) of subsection (a) of this section, upon a first conviction thereof, shall be punished by a fine of not less than \$50 nor more than \$500 and upon any subsequent conviction thereof occurring within 2 years from the first conviction, shall be punished by a fine of not less than \$250 nor more than \$1000."

Section 17. Amend Chapter 51, Title 6 of the Delaware Code by adding thereto a new section to read as follows:

"§ 5141. Fines payable by mail.

(a) Applicability. Any weights and measurers inspector in this State, who issues a citation for any of the offenses which are violations of laws or regulations established or promulgated under the authority of Chapter 51 of Title 6 of this Code, may, in addition to issuing a summons for any such offenses, provide the violator with a voluntary assessment form which, when properly executed by the weights and measures inspector and the offender, allows the offender to dispose of the charges without the necessity of personally appearing in the court to which the summons is returnable.

(b) Definitions.

(1) 'Payment' as used in this Section shall mean the total amount of the fine and of the costs as herein provided and of the penalty assessment added to the fine pursuant to the Delaware Victim Compensation Law, Chapter 90 of Title 11.

(2) 'Voluntary assessment form' as used in this Section means the written agreement or document signed by the violator wherein he or she agrees to pay by mail the fine for the offense described therein together with costs and penalty assessment.

(c) Places and time of payment.

Payments made pursuant to this Section shall be remitted to the court to which the summons is returnable and shall be disbursed to the General Fund of the State of Delaware. The payment must be received by the court within 10 days from the date the citation was issued (excluding Saturday and Sunday), and shall be paid only by check or money order.

(d) Offenses designated as 'offenses subject to voluntary assessment'; exceptions. All offenses, as now or hereafter set forth in this Title or regulations promulgated under the authority of this Title, are hereby designated as offenses subject to voluntary assessment except the following offenses: Violation of § 5133 and § 5134 of this Title.

(e) Offer and acceptance of voluntary assessment; effect; withdrawal of acceptance; request for hearing.

(1) At the time of issuing a citation for any offense subject to this Section, the weights and measures inspector may offer the alleged violator the option of accepting a voluntary assessment. The alleged violator's signature on the voluntary assessment form constitutes an acknowledgment of guilt of the offense stated in the form, and on agreement to pay the fine as herein provided, together with the costs and penalty assessment, within 10 days from the date of the issuance of the citation (excluding Saturday and Sunday), during which time payment must be received by the court.

(2) The alleged violator, after signing and receiving the voluntary assessment form, may withdraw his or her acceptance of the voluntary assessment and request a hearing on the charge stated in such form, provided that the alleged violator, within 10 days from the date of the issuance of the citation (excluding Saturday and Sunday), personally or in writing notifies the court to which payment of the penalty assessment was to be made that he or she wishes to withdraw his or her acceptance of the voluntary assessment and requests a hearing on the charge stated in the voluntary assessment form. If the alleged violator notifies the court of such withdrawal and request for hearing as aforesaid, he or she shall be prosecuted for the charge stated in the voluntary assessment form as if such form had not been issued.

(f) Penalty. If an alleged violator elects the option of accepting a voluntary assessment in accordance with subsection (e) of this Section, the penalty for offenses designated as offenses subject to voluntary assessment shall be the minimum fine for each specific offense charged, and fines shall be cumulative if more than one (1) offense is charged.

(g) Court costs and applicability of Delaware Victim Compensation Law. In lieu of any court costs, and provided the offense is not subject to other proceedings under this Section, each fine for an offense under this Section shall be subject to court costs of \$8.50. Each fine for an offense under this Section shall be subject also to the penalty assessment which is or may be provided for in the Delaware Victim Compensation Law, Chapter 90 of Title 11 of this Code.

(h) Agreement to accept voluntary assessment; procedure. Whenever a person is issued a citation for an offense subject to voluntary assessment and has elected to make payment as herein provided, the weights and measures inspector, using the weights and measures citation, shall complete the information section and prepare the voluntary assessment form indicating the amount of the fine, have the alleged violator sign the voluntary assessment form, and give a copy of the citation and form to the individual cited for violating the requirements of this Chapter or the rules and regulations promulgated thereunder. The weights and measures inspector issuing the citation shall also inform the individual cited of the court to which payment shall be submitted. No weights and measures inspector shall receive or accept custody of a payment. If the person declines to accept the voluntary assessment, the weights and measures inspector shall follow the procedures outlined in § 5139 of this Chapter.

(i) Payment of fine as complete satisfaction; repeat offenders. (1) Payment of the prescribed fine, costs, and penalty assessment is a complete

satisfaction of the violation, except as provided in paragraph (2) of this subsection.

(2) In the event that following compliance with the payment provisions of this Section, it is determined that within the 2-year period immediately preceding the violation, the violator was convicted of or made a payment pursuant to this Section in satisfaction of a violation of the same Section of this Title, personal appearance before the court to which summons is returnable shall be required. Notice of the time and place for the required court appearance shall be given to the violator to which the summons for the offense would be returnable.

(j) Removal from applicability of Section. (1) If a payment due pursuant to this Section is not received by the court to which the summons is returnable within 10 days from the date of the issuance of the citation, the violator shall be prosecuted for the offense charged on the voluntary assessment form in a manner as if a voluntary assessment form had not been used. Upon conviction in such prosecution, the court shall impose penalties as provided for by this Title or other law relating to the particular violation charged, and this Section, as to payment of fines under voluntary assessments, shall not apply.

(k) Nonexclusive procedure. The procedure prescribed is not exclusive of any other method prescribed by law for the prosecution of persons violating this Title."

Section 18. This Act shall take effect 180 days from its enactment into law.

Approved June 17, 1996

CHAPTER 371  
FORMERLY  
SENATE SUBSTITUTE NO. 1  
TO  
SENATE BILL NO. 281

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO  
WITHHOLDING TAXES

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend §1154(d), Title 30, Delaware Code, by designating said subsection as subsection (h) of said section.

Section 2. Amend §1154, Title 30, Delaware Code, by striking subsections (a) through (c) of said section and substituting in lieu thereof the following:

"(a) *General* - Every employer required to deduct and withhold tax under this chapter shall file a withholding return as prescribed by the Division of Revenue and pay over such tax to the Division of Revenue, or to a depository designated by the Division of Revenue, at a frequency to be determined as follows:

(1) An employer whose aggregate amount of taxes required by this subchapter to be deducted and withheld during the lookback period did not exceed \$3600 shall be a quarterly filer;

(2) An employer whose aggregate amount of taxes required by this subchapter to be deducted and withheld during the lookback period exceeded \$3600 but did not exceed \$20,000 or which had no employees within Delaware during the lookback period shall be a monthly filer; and

(3) An employer whose aggregate amount of taxes required by this subchapter to be deducted and withheld during the lookback period exceeded \$20,000 shall be an eighth-monthly filer;

(b) A quarterly filer shall file a return and pay over taxes required to be deducted and withheld under this chapter not later than the last day of the month following the close of each calendar quarter.

(c) A monthly filer shall, for each month, file a return and pay over taxes required to be deducted and withheld during such month on or before the 15th day of the month following the end of such month.

(d) An eighth-monthly filer shall file a return and pay over taxes required to be deducted and withheld under this chapter not later than three working days following the end of any deposit or return period during which an employer made any payment subject to a requirement to withhold tax under this chapter. For purposes of this subsection, each month shall be divided into eight deposit or return periods. These deposit or return periods end on the 3rd, 7th, 11th, 15th, 19th, 22nd, 25th and last day of every month.

(e) For purposes of this subchapter, the term 'lookback period' shall refer to the twelve month period between July 1 and June 30 immediately preceding the calendar year for which the filing frequency is determined by reference to the lookback period.

(f) Any employer required under the provisions of §6302 (or successor provision) of the Internal Revenue Code to deposit federal employment taxes by

electronic funds transfer shall be required to deposit taxes withheld under this subchapter by electronic funds transfer, except that, for purposes of this subsection, one year shall be added to the 'applicable effective date' on which deposit by electronic funds transfer is required of a particular employer under regulations promulgated pursuant to the provisions of §6302 (or successor provision) of the Internal Revenue Code. The Director of Revenue shall prescribe such regulations as may be necessary for the development and implementation of an electronic funds transfer system which is required to be used for the collection of taxes withheld under this chapter. Such system shall be designed in such manner as may be necessary to ensure that such taxes will be credited to an account maintained by the State Treasurer on the date on which the return and taxes would otherwise have been required to be filed under this subchapter.

(g) Any employer that demonstrates it filed and paid over withholding taxes under this chapter on or before the date on which it was required to deposit federal employment taxes shall be deemed to have established reasonable cause for late filing and payment of withheld taxes for purposes of chapter 5 of this title."

Section 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared severable.

Section 4. This Act shall be effective for tax periods beginning after December 31, 1996. The first mandatory electronic funds transfer under this Act shall be for amounts withheld after December 31, 1996, for all employers required to file and remit electronically federal employment taxes as of January 1, 1996.

Approved June 19, 1996

## CHAPTER 372

### FORMERLY

#### SENATE BILL NO. 339

#### AS AMENDED BY SENATE AMENDMENT NO. 1

### AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO WEARING DISGUISES DURING THE COMMISSION OF A FELONY:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 11, Delaware code, by inserting new section §1240 as follows:

"§1240. Wearing a disguise during the commission of a felony; class E felony.

(a) A person who wears a hood, mask or other disguise during the commission of any felony is guilty of wearing a disguise during the commission of a felony. Wearing a disguise during the commission of a felony is a class E felony.

(b) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted during which the person was wearing a disguise is a lesser included felony of the one originally charged."

Approved June 21, 1996

## CHAPTER 373

## FORMERLY

SENATE BILL NO. 354  
AS AMENDED BY SENATE AMENDMENT NO. 1 AND  
HOUSE AMENDMENT NOS. 1 & 2AN ACT TO AMEND CHAPTER 43 OF TITLE 11 OF THE DELAWARE CODE RELATING  
TO SEX OFFENDERS.BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend § 4336 of Title 11 of the Delaware Code by deleting the text of said section in its entirety and by substituting in lieu thereof the following:

"(a) Notwithstanding any other provision of law to the contrary, the Department of Corrections, or the Department of Services to Children, Youth and Their Families ('DSCYF') as the case may be, shall provide written notice to the Attorney General, to the chief law enforcement officer of the jurisdiction which made the original arrest, to the chief law enforcement officer where the prisoner intends to reside and to the Superintendent of State Police, of the release from incarceration of any person who has been convicted of (i) any of the offenses specified in §§ 764 through 779 of Title 11 of the Delaware Code or (ii) any of the offenses specified in §§ 1108 through 1111 of Title 11 of the Delaware Code; or (iii) attempt to commit any of the foregoing offenses, or of the release of any juvenile adjudicated delinquent on the basis of an offense which, if committed by an adult, would constitute (i) any of the offenses specified in §§ 764 through 779 of Title 11 of the Delaware Code, or (ii) any of the offenses specified in §§ 1108 through 1111 of Title 11 of the Delaware Code, or (iii) attempt to commit any of the foregoing offenses.

(b) Notwithstanding any other provision of law to the contrary, the official in charge of any other institution where an inmate is confined because of the commission or attempt to commit any of the offenses specified subsection (a) above, or the official in charge of a state hospital to which a person is committed as a result of having been convicted or adjudged guilty but mentally ill or adjudged not guilty by reason of insanity of one of the offenses specified in subsection (a) above, shall provide written notice to the Attorney General, to the chief law enforcement officer of the jurisdiction which made the original arrest, to the chief law enforcement officer where the prisoner intends to reside and to the Superintendent of State Police, of the release from such institution or state hospital of any such inmate or person.

(c) Any notice required pursuant to subsection (a) or subsection (b) above shall be given no more than 90 days, and no less than 45 days, prior to such person's release. The notice shall include, without limitation, the legal name, any alias or nicknames, age, sex, race, fingerprints, all known identifying factors, offense history, anticipated future residence and a photo of the released person supplied by the Department of Corrections, or the DSCYF, as the case may be, and taken not more than 90 days prior to release. No person shall be released from incarceration or confinement unless and until he or she cooperates with the appropriate authorities pursuant to this section.

"(d) Notwithstanding any other provision of law to the contrary the court, where a person convicted of any of the offenses specified in subsection (a) above is released by a state court on probation or discharged by a state court upon payment of a fine, shall provide written notice to the attorney general, to the chief law enforcement officer of the jurisdiction which made the original arrest, to the chief law enforcement officer where the convicted person intends to reside and to the superintendent of state police, of the release from such court.

(e) Any notice pursuant to subsection (d) shall be given no more than 5 working days after the person's release. The notice shall include, without limitation, the following information as it is available to the court or notation as to the repository for said information: the legal name, any alias or nicknames, age, sex, race, fingerprints, all known identifying factors, offense history, anticipated future residence and a photo taken not more than 90 days prior to release.

(f) The Attorney General shall use any reasonable means to notify the victim of the anticipated release unless the victim has requested not to be notified.

(g) The Attorney General shall, within ten days after receiving notification of a pending release pursuant to subsection (a) or subsection (b), or notification of release pursuant to subsection (d) of this section assess the offender in accordance with the Registrant Risk Assessment Scale, the form of which and a manual for which are attached hereto as Exhibit A. The Attorney General shall notify the Delaware State Police and the chief law enforcement officer of the jurisdiction where the offender intends to reside as to the resulting score on the Registrant Risk Assessment Scale, and shall forward a copy of the completed Registrant Risk Assessment Scale to the Superintendent of the Delaware State Police and to the chief law enforcement officer of the jurisdiction where the registrant offender intends to reside.

(h) The chief law enforcement officer of the jurisdiction where the inmate intends to reside, or the Superintendent of State Police if no local agency exists, shall provide notification of the convicted sex offender's release in accordance with the following guidelines:

(i) Those persons receiving a 'Low Risk' score on the Registrant Risk Assessment Scale shall be considered a Tier One offender. The release of Tier One offenders will require notification to all law enforcement agencies with jurisdiction over the area where the offender intends to reside.

(ii) Those persons receiving a 'Moderate Risk' score on the Registrant Risk Assessment Scale shall be considered a Tier Two offender. In addition to law enforcement notification, the release of a Tier Two offender shall require a Community Organization Alert pursuant to this paragraph. Such Community Organization Alert may include a photograph of the offender if deemed appropriate by the notifying agency. In order to be a community organization entitled to Tier Two notification, such organizations must register with the local law enforcement agency or, where the community has no local law enforcement agency, with the Superintendent of State Police. Organizations may only be included on the notification list if they operate an establishment where children gather under their care, or where women are cared for. The State Board of Education shall provide all law enforcement agencies within the State a list of all educational institutions within the Board's administration. Every law enforcement agency shall automatically register each institution on the Board's list located within its jurisdiction. Notification will go to those organizations which, at any specific time, are likely to encounter the released offender. 'Likely to encounter' for this act means that the location of any organization is such that they are in close geographic proximity to a location where the released offender resides or visits or can be presumed to visit on a regular basis.

(iii) Those persons receiving a 'High Risk' score on the Registrant Risk Assessment Scale shall be considered a Tier Three offender. In addition to law enforcement notification and a Community Organization Alert, the release of a Tier Three offender shall require Community Notification pursuant to this paragraph. Community Notification shall be conducted by door-to-door appearances or by mail or by other methods devised specifically to notify members of the public likely to encounter the offender. Community Notification should be targeted to a defined community. Such Community Notification may include a photograph of the offender if deemed appropriate by the notifying agency.

(i) A complete register of all persons convicted after June 27, 1994, of any of the offenses specified in subsection (a) above, or of attempt to commit any of such offenses, shall be created, maintained and routinely updated by the Delaware State Police for immediate accessibility by the Delaware Justice Information System (DeJIS) computer to all law enforcement agencies. Such register shall be accessible by the name of each offender or by county of residence of each offender. The register required by this subsection shall be established by the Delaware State Police no later than six months after the effective date of this Act.

(j) All elected public officials, public employees, and public agencies are immune from civil liability for any discretionary decision to release relevant information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

(k) There shall be no civil legal remedies available as a cause of action against any public official, public employee, or public agency for failing to release information as authorized in this section.

(l) In addition to those circumstances enumerated in this Act, law enforcement agencies shall notify any member of the public of the release of a person described in subsection (a), subsection (b) or subsection (d) of this section where such released person may pose a particular threat or danger to a member of the public.

(m) The Court in which any person described in subsection (a) of this section is sentenced shall designate for the Department of Corrections, or the DSCYF, as the case may be, at the time of sentencing that notice in accordance with this section shall be required.

(n) The Court in which any person described in subsection (b) of this section is sentenced shall designate for the official in charge of the institution of confinement or state hospital at the time of sentencing that notice in accordance with this section shall be required.

(o) The Court in which any person described in subsection (d) of this section is sentenced shall determine, at the time of sentencing, that notice in accordance with this section shall be required."

Section 2. This Bill shall apply to any person described in subsection (a), subsection (b) or subsection (d) of § 4336 of Title 11, as amended by this Bill, sentenced after the enactment hereof.

#### REGISTRANT

#### RISK ASSESSMENT SCALE

#### MANUAL

This manual is to assist in the implementation of the Registrant Risk Assessment Scale. The purpose of the scale and this accompanying manual is to provide an objective standard on which to base the community notification decision mandated by statute and to insure that the notification law is applied in a uniform manner throughout the State.

The purpose of the assessment is to provide a method of notification to the public so as to address the concerns of the community regarding the location of convicted sex offenders who may be at risk of committing further offenses. This assessment is not intended to determine the actual probability of reoffense but is a method of objectively placing registrants in tiers designed to provide the public with notice of the whereabouts of convicted sex offenders, such that the community will be better informed and prepared.

This procedure sets forth a numerical value which translates into a risk assessment which correlates to a tier. This tier determination will not be modified unless there is a debilitating condition that unequivocally deems the risk of reoffense non-existent.

#### Selection of Risk Assessment Criteria

1. Assessing the potential risk of reoffense of a sex offender has several components:

- A. The seriousness of offenses committed by the registrant
- B. The history of offending, and
- C. Characteristics of the offender.

Risk Assessment Criteria were specifically selected to reflect the seriousness of the offense; thus separating the nuisance offense which poses a low risk to the community from those crimes that carry a high potential risk to the community given the seriousness of a reoffense.

The scale itself was grouped so that criteria is divided among the A) Seriousness of the offense, B) Offense history of the registrant and C) Characteristics that have been exhibited by the registrant.

2. Weighting of the risk assessment criteria:

- A. Most weight being given to the seriousness of the offense as it has the potential to pose most harm to the community upon recidivism.
- B. The least weight being given to the characteristics of the offender as treatment has not proven to be a "cure".

#### Sample Cases

Once the scoring mechanisms were agreed upon, actual police cases were used as sample cases to insure that risk assessments using the scale confirmed to expert judgments.

#### Utilizing the Criteria

The assessing individual should look to the most serious instance of each category as it appears on registrant's record. For example, where the record reveals that a registrant has committed a sex offense against an 11-year old but no weapon or other violence was used, but in a different sex offense committed by the same person against a 20-year old using a weapon or violence, the Criterion 1 should reflect the use of violence and Criterion 3 should reflect that a crime was committed against an 11-year old.

Determination of the number of victims or offenses may be based upon documentation other than a criminal conviction. Such documentation may include, but is not limited to, criminal complaints not the subject of a conviction but which are supported by credible evidence, victim statements, admissions by the registrant, police reports, medical, psychological or psychiatric reports, pre-sentencing reports, and discharge summaries from the Department of Correction.

#### Criteria Explanation with Examples

The following is a list of the criteria in the Registrant Risk Assessment Scale and examples of "Low Risk", "Moderate Risk" and "High Risk". The examples are in no way intended to be exclusive.

1. Degree of Force -- relates to the seriousness of the potential harm to the community if reoffense occurs.

Low Risk example --- offenders exposes self to child/adult

Moderate Risk example -- offender threatens physical harm, attempts to obtain sexual gratification through use of candy, pets or other nonviolent acts or verbally coerces by telling a child victim that he will get "in trouble" or "won't be loved" if he tells anyone of the abuse.

High Risk example -- offender uses violence, a weapon (whether offender uses or is armed with it), any use of physical force or victim injury.

2. Degree of Contact -- relates to the seriousness of the potential harm to the community if reoffense occurs.

Low Risk example -- exhibitionism or showing of pornographic material

Moderate Risk example -- foundling either over or under clothing, approaches victim and presses body against buttocks over clothing.

High Risk example -- penetrates orifice with object or any body part.

3. Age of Victim -- this criterion mirrors statutory age levels. If two or more victims are known, the age of the youngest victim for any offense known is scored. Offenses need not have led to conviction if credible evidence exists in the records. For juveniles a four year age difference between the offender and the victim is needed to score this criterion.

4. Victim Selection -- reference here is made to the manner in which victims are selected and which selections place the community as a whole in the most danger.

Low Risk example -- sexually abuses sibling, household member, biological child, or stepchild. Sexually abuses family member who does not live in the household.

Moderate Risk example -- "acquaintance" implies a degree of social/business interaction. Sexual abuse of a neighbor's child, child for whom offender is babysitting, or a child for whom offender is a coach, teacher, etc. Offender performs coercive sexual acts with date.

High Risk example -- sexually abuses child or adult stranger accosted on street, in park or in schoolyard. Offender lures stranger into coercive sexual activity. Use of the word "stranger" does not automatically preclude the fact of situations in which the victim knows the identify of the offender, for example, the offender and the victim may have had an exchange of words in a bar or other social setting.

5. Number of Victims -- a conviction is not necessary if the rater finds credible evidence of multiple sexual victims.

Low Risk example -- intrafamilial sexual abuse of one child (even if multiple times); sexual assault of one adult stranger.

Moderate Risk example -- two separate victims (even if one incident involving both victims).

High Risk example -- three or more separate individuals.

6. Number or Frequency of Offense -- a conviction is not necessary if the rater finds credible evidence to support a specific number or times of offensive behavior.

Low Risk example -- one known offense with no evidence of multiple offenses.

Moderate Risk example -- second known offense with same or different person.

High Risk example -- Three or more known offenses with same or different person.

7. Prior Criminal History -- prior criminal history includes sex offenses not the subject of criminal prosecution, other crimes against persons and crimes against property. Acts which are not the subject of criminal charges but are credibly represented in the records may be counted. Such documentation may include evidence of behavioral problems in school, prior diagnoses of disorder or defiant disorder. Acts perpetrated while incarcerated or committed may be included.

8. Recidivism -- the number of times that the offender has relapsed into criminal behavior.

Low Risk example -- first time offender; no history or convictions of same or different crime.

Moderate Risk example -- one documented occurrence of convictions or arrests for the same or different crime.

High Risk example -- more than one documented occurrence of convictions or behavior that led to prior arrests for same or different crime.

9. Response to Treatment -- a therapist must have a report to rate this criterion.

Low Risk example -- offender participates in all sessions of sex offender specific treatment. No offense during treatment.

Moderate Risk example -- indication of some progress, but is not consistent in attendance or participation. No offenses during treatment.

High Risk example -- not in treatment; no progress shown if in treatment or more offenses committed while in treatment.

10. Substance or Alcohol Abuse -- any substance can act as a disinhibitor of impulses thus causing an offender to act on urges that might otherwise be under control. Substance/alcohol abuse can be an indicator of an antisocial lifestyle or a low level of social competence.

Low Risk example -- no history of use that impaired social or occupational functioning.

Moderate Risk example -- abuse presently in remission.

High Risk example -- current substance dependency; present functioning impaired."

Approved June 21, 1996

## CHAPTER 374

## FORMERLY

## HOUSE BILL NO. 477

## AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO STATE POLICE ELIGIBILITY FOR DISABILITY PENSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Amend § 8365, Title 11 of the Delaware Code, by adding thereto a new subsection

to read:

"(d) For the purposes of this Section, whether a member is employed as an on-duty State Trooper, as a municipal officer pursuant to a contract with the State, or on an authorized special duty function, the following duties shall be presumed to occur only while employed as a police officer, without limiting the scope of acts embraced by subsection (a) of this Section: (1) Engaging in a high-speed chase; (2) Effecting an arrest (criminal or traffic); (3) Pursuing a suspect (criminal or traffic); (4) Patrolling (criminal or traffic); (5) Directing traffic or removing traffic hazards; (6) Assisting a civilian, for example, a motorist alongside of the highway or rendering aid in a life-threatening situation (fire, drowning); (7) In-service training other than physical fitness; (8) Performing police functions at a crime scene or in connection with the investigation thereof; or (9) Being assaulted whether by a suspect, detainee, arrestee, prisoner, or mental patient."

Approved June 21, 1996

## CHAPTER 375

## FORMERLY

## HOUSE BILL NO. 503

## AN ACT TO AMEND TITLE 13, DELAWARE CODE, RELATING TO MARRIAGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 101(a), Chapter 1, Title 13, Delaware Code, by striking the word "or" as it appears after the word "nephew" and before the word "first" and by adding after the word "cousin" the following:

"or between persons of the same gender".

Section 2. Amend § 101, Chapter 1, Title 13 Delaware Code by adding a new subsection to read as follows:

"(d) A marriage obtained or recognized outside the State of Delaware between persons prohibited by subsection (a) of this Section shall not constitute a legal or valid marriage within the State of Delaware."

Section 3. The provisions of this Act are to be liberally construed to effectuate the policies and purposes of this Act. In the event of conflict between this Act and any other provision of law, the provisions of this Act shall govern.

Section 4. If any provision of this Act or the application thereof to any person is held invalid, such invalidity shall not effect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Approved June 21, 1996

## CHAPTER 376

## FORMERLY

## HOUSE BILL NO. 538

AN ACT TO AMEND TITLE 18, DELAWARE CODE, RELATING TO INSURER SIGNATURE REQUIREMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 527, Chapter 5, Title 18, Delaware Code, by deleting that Section in its entirety.

Section 2. Amend Section 528, Chapter 5, Title 18, Delaware Code, by deleting that Section in its entirety.

Approved June 21, 1996

## CHAPTER 377

## FORMERLY

HOUSE BILL NO. 371  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE USE OF VIDEO CAMERAS FOR SURVEILLANCE ON PUBLIC SCHOOL PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 41, Title 14 of the Delaware Code, by adding thereto a new section, to read:

"§ 4120. Video Cameras on Public School Property.

The school board of each school district shall have authority to establish and implement programs to use video cameras for surveillance on public school property, including but not limited to classrooms, halls, auditoriums, cafeterias, gymnasiums, and parking areas, for the purpose of monitoring student behavior to help ensure the safety of students and teachers. However, no video camera shall be used for classroom surveillance, pursuant to this section, unless the principal of the school and the teacher of the classroom consent to the surveillance.

Before exercising its authority under this section, a school board shall promulgate rules and regulations governing the implementation and use of video cameras in classrooms. However, in no event shall video cameras be used at any time or at any location which would violate a student's reasonable expectation of privacy including, but not limited to locker rooms, areas where students may disrobe, and lavatories."

Approved June 24, 1996

## CHAPTER 378

## FORMERLY

HOUSE BILL NO. 481  
AS AMENDED BY HOUSE AMENDMENT NO. 1

## AN ACT TO AMEND CHAPTER 31, TITLE 16, RELATING TO VITAL STATISTICS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 3101, Subchapter I, Chapter 31, Title 16 of the Delaware Code by adding thereto a new subdivision "(12)" as follows:

"(12) 'Induced termination of pregnancy' means the purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant, and which does not result in a live birth. This definition excludes management of prolonged retention of products of conception following fetal death."

Section 2. Amend Subchapter II, Chapter 31, Title 16 of the Delaware Code by adding thereto a new § 3133 as follows:

"§ 3133. Reports of Induced Termination of Pregnancy.

Each induced termination of pregnancy which occurs in this state, regardless of the length of gestation, shall be reported to the Delaware Health Statistics Center within the Bureau of Health Planning and Resources Management by the person in charge or a designated representative of the institution or abortion facility in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution of abortion facility, the attending physician shall prepare and file the report. Such reporting shall occur within 30 days after the end of the month in which the induced termination of pregnancy was performed. These reports are to be used only for purposes of statistical analysis and shall not be incorporated into the permanent official records of the system of vital statistics. The reporting form shall include only those items recommended by the federal agency responsible for national vital statistics except that it shall not include any item that allows identification of patients or physicians. Furthermore, no statistical analysis shall be released which identifies the reporting institution or abortion facility."

Section 3. Severability.

If any clause, sentence, section, provision or part of this Act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, invalidate or affect the remainder of this Act which shall remain in full force and effect.

Section 4. Repealing Clause.

All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Effective Date.

This Act shall become effective January 1, 1997.

Approved June 20, 1996

## CHAPTER 379

## FORMERLY

HOUSE BILL NO. 468  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 82, TITLE 29 OF THE DELAWARE CODE RELATING TO EXEMPTION FROM LIABILITY WHEN RENDERING ASSISTANCE OR ADVICE AT THE REQUEST OF ANY EMERGENCY SERVICE AGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §8230 (a), Title 29 of the Delaware Code by striking said subsection 1a in its entirety and substituting in lieu thereof a new §8230 (a) to read as follows:

§8230. Exemption from liability

(a) Notwithstanding any provision of law to the contrary, no individual, partnership, emergency response team, corporation, industrial response team, association or other entity shall be liable in civil damages as a result of acts taken or omitted in anticipation of, in preparation for, or in the course of rendering care, assistance, or advice at the request of any emergency service agency with respect to an incident creating a danger to person, property, or the environment as a result of spillage, seepage, fire, explosion, or other discharge or release of oil, gasoline, diesel fuel or hazardous materials, or the possibility thereof.

Approved June 24, 1996

## CHAPTER 380

## FORMERLY

## SENATE BILL NO. 373

AN ACT TO AMEND CHAPTER 68 OF TITLE 7 OF THE DELAWARE CODE RELATING TO THE BUILDING LINE IN REHOBOTH BEACH AND BETHANY BEACH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §6802(4), Chapter 68, Title 7, Delaware Code, by adding at the end of the existing subsection a new sentence to read as follows:

"Within the corporate limits of Rehoboth Beach and Bethany Beach in commercial areas containing boardwalks and where no natural dune exists, the building line shall be along the westerly edge of the boardwalk."

Approved June 24, 1996

CHAPTER 381

FORMERLY

SENATE BILL NO. 353  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO DEPENDENT OR NEGLECTED CHILDREN AS WARDS OF THE STATE, AND TITLE 31 OF THE DELAWARE CODE RELATING TO DELINQUENT YOUTH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 31 of the Delaware Code by striking Section 304 in its entirety and substituting in lieu thereof the following:

~~"§304. Dependent or neglected children deemed wards of State; duty of Division.~~

All dependent or neglected children, as defined in §301 of this Title, shall be considered, for the purpose of this subchapter, wards of the State and in need of care and protection, and the Division of Family Services shall exercise such duties as shall be necessary, proper and expedient for the supervision, care, custody, board and placement of dependent and neglected children. As used in this section, 'care' shall mean medical examination, medical treatment including surgical procedures and mental health treatment other than inpatient psychiatric hospitalization. If in the judgment of the Division payments are necessary, proper and expedient for the board of the child, such payments may be continued for children who were dependent or neglected but who have been legally adopted or whose guardianship has been granted to the individual caretaker by the Family Court of the State of Delaware."

Section 2. Amend §5106 (3), Title 31 of the Delaware Code by inserting the words "in the Department's legal custody" between the words "delinquent children" and the semicolon.

Section 3. Amend §5101 (6) by adding the following sentence thereto:

"Ordinary medical care shall mean medical examination, medical treatment including surgical procedures and mental health treatment other than inpatient psychiatric hospitalization".

Approved June 24, 1996

CHAPTER 382

FORMERLY

SENATE BILL NO. 269

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO HOMICIDES OF CHILDREN WHICH OCCUR THROUGH ABUSE OR NEGLECT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 633(a) of Title 11 of the Delaware Code by striking the word "recklessly" as it appears in the first sentence of said subsection.

Approved June 24, 1996

## CHAPTER 383

## FORMERLY

## HOUSE BILL NO. 456

## AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO GENERAL DEFINITIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 222 of Title 11 of the Delaware Code by adding a new paragraph (23) thereto and by redesignating the subsequent remaining subsections. The new paragraph shall read:

"(23) 'Telephone', in addition to its ordinary meaning, includes any computer (as defined in § 931 of this Title) or any other electronic device which is actually used to engage in a wire communication (as defined in § 1336 of this Title) with any other telephone, computer, or electronic device."

Approved June 24, 1996

## CHAPTER 384

## FORMERLY

HOUSE BILL NO. 536  
AS AMENDED BY HOUSE AMENDMENT NO. 1

## AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO BICYCLISTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 4157 of Title 21 of the Delaware Code by deleting the following words from paragraph (2) thereof:

"; not withstanding the foregoing provisions, a person operating a bicycle may give a right turn signal by extending the right hand and arm horizontally and to the right side of the bicycle".

Section 2. Amend § 4198A(a) of Title 21 of the Delaware Code by restating said subsection in its entirety as follows:

"(a) A person operating a bicycle shall give hand and arm signals as follows:

- (1) Left Turn -- Left hand and arm extended horizontally and to the left side of the bicycle.
- (2) Right Turn -- Right hand and arm extended horizontally and to the right side of the bicycle or the left hand and arm extended upward.
- (3) Stop or Decrease Speed -- Left hand and arm extended downward from the left side of the bicycle."

Section 3. Amend Subchapter XII, Chapter 41, Title 21 of the Delaware Code by adding a new section thereto to read as follows:

"§ 4198M. Exemption for Bicycle-Mounted Police Officers.

Bicycle-mounted police officers, while responding to an emergency or during the pursuit of an actual or suspected violator of the law, are exempt from the obligations under this subchapter."

Approved June 24, 1996

CHAPTER 385

FORMERLY

SENATE BILL NO. 356

AN ACT TO AMEND AN ACT BEING CHAPTER 288, VOLUME 64, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF LAUREL," TO ALLOW THE MONITION METHOD TO BE USED AS AN ALTERNATE METHOD TO COLLECT DELINQUENT TAXES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 288, Volume 64, Laws of Delaware, as amended, by adding thereto a new subsection under Section 28, which relates to the collection of annual taxes, to be designated as Subsection (i) and to read as follows:

"(i) Furthermore, should the Town Manager alternatively elect, he or she is empowered to sell the lands and tenements of the delinquent taxpayer, or the lands and tenements of a delinquent taxpayer alienated subsequent to the levy of the tax by the direction of the Town Council using any of those procedures specified for the sale of lands for the collection of taxes on the part of the individuals charged with the responsibility for the collection of taxes for Sussex County, and all such procedures and methods available for the sale of lands, as aforesaid, including the redemption periods, as they are presently enacted and hereafter amended, are included herein and made a part hereof by reference thereto, including the method of sale by monition, as the same is set forth in 9 Del. C. §8721 et seq., and as the same may hereafter be amended from time to time, substituting the Town of Laurel for the Department of Finance of Sussex County and/or Sussex County."

Approved June 24, 1996

## CHAPTER 386

## FORMERLY

## SENATE BILL NUMBER 364

AN ACT TO AMEND CHAPTER 3 OF TITLE 29 OF THE DELAWARE CODE  
RELATING TO THE DESIGNATION OF SOLIDAGO ODORA (SWEET  
GOLDEN ROD) AS THE OFFICIAL STATE HERB.

WHEREAS, many states across America have designated an official "state herb" to accompany their state flag, state flower, state bird and state bug; and

WHEREAS, the State of Delaware, despite its great wealth of indigenous flora, has never made such a designation; and

WHEREAS, members of the International Herb Growers and Marketers Association of Delaware, aware of this fact, have suggested that the herb "Solidago Odora," commonly known as "Sweet Golden Rod" because of its beautiful, golden blossoms, would be especially appropriate as the subject of such designation; and

WHEREAS, Sweet Golden Rod is both indigenous to Delaware and widespread throughout the state where it is commonly found in our coastal areas along the edges of marshes and thickets; and

WHEREAS, Sweet Golden Rod has many associations with American history and culture, not the least of which is that, following the Boston Tea Party in the 1760's, when Americans protested the imposition by Great Britain of outrageous customs duties by dumping a cargo of English tea into Boston harbor and thereafter boycotting the use of this product which had hitherto been the common beverage of choice throughout the colonies, they turned to herbal tea made from Sweet Golden Rod as a substitute, calling it "Liberty Tea;" and

WHEREAS, prior to that time, the herb had been commonly used by native Americans; and

WHEREAS, Sweet Golden Rod, which has been unfairly and inaccurately blamed over the years for causing hayfever among allergy sufferers, continues in widespread use today as herbal tea and seasoning for cooking, as a natural dye and, when in bloom, as a lovely flower both fresh cut and dried, in which state it is used for various crafts; and

WHEREAS, Sweet Golden Rod blooms are even used in many elegant restaurants as an edible garnish in the presentation of fine meals; and

WHEREAS, the designation of Sweet Golden Rod would be highly appropriate not only in its own right, but as a means whereby Delaware State Government might recognize the increasingly vital role played by herb culture in Delaware's agricultural economy;

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Chapter 3, Title 29 of the Delaware Code by adding thereto a new section, to be designated "§ 313", which new section shall read as follows:

"§313. State herb.

Solidago Odora, commonly known as "Sweet Golden Rod," shall be the official herb of the State."

Approved June 24, 1996

CHAPTER 387

FORMERLY

HOUSE BILL NO. 466  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SCHOOL DISTRICT ENROLLMENT CHOICE PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 403(a), Chapter 4, Title 14 of the Delaware Code, by deleting the phrase "January 1" and by inserting in lieu thereof the phrase "January 10".

Section 2. Amend Section 404(b), Chapter 4, Title 14 of the Delaware Code, by deleting the phrase "February 15" and by inserting in lieu thereof the phrase "the last day of February".

Approved June 24, 1996

CHAPTER 388

FORMERLY

HOUSE BILL NO. 509  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 49, SUBCHAPTER II, TITLE 15, DELAWARE CODE, RELATING TO VOTING PROCEDURE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4937(f), Title 15, Delaware Code, by striking the number "10" as it appears in the first sentence of said subsection (f), and inserting in lieu thereof the number "14".

Section 2. Amend §4937(f), Title 15, Delaware Code, by striking the number "10" as it appears in the second sentence of said subsection (f), and inserting in lieu thereof the number "14".

Approved June 24, 1996

## CHAPTER 389

## FORMERLY

## HOUSE BILL NO. 535

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO COUNTY AND MUNICIPAL POLICE ELIGIBILITY FOR DISABILITY PENSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Amend § 8815, Title 11 of the Delaware Code, by adding thereto a new subsection

to read:

"(d) For the purposes of this Section, whether a member is employed as an on-duty police officer, or on an authorized special duty function, the following duties shall be presumed to occur only while employed as a police officer, without limiting the scope of acts embraced by subsection (a) of this Section: (1) Engaging in a high-speed chase; (2) Effecting an arrest (criminal or traffic); (3) Pursuing a suspect (criminal or traffic); (4) Patrolling (criminal or traffic); (5) Directing traffic or removing traffic hazards; (6) Assisting a civilian, for example, a motorist alongside of the highway or rendering aid in a life-threatening situation (fire, drowning); (7) In-service training other than physical fitness; (8) Performing police functions at a crime scene or in connection with the investigation thereof; or (9) Being assaulted whether by a suspect, detainee, arrestee, prisoner, or mental patient."

Approved June 24, 1996

## CHAPTER 390

## FORMERLY

## HOUSE BILL NO. 539

AN ACT TO AMEND CHAPTER 75, TITLE 29, DELAWARE CODE, RELATING TO GUARANTEED ENERGY COST SAVINGS CONTRACTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 75, Title 29, Delaware Code, by adding a new section to read as follows:

"§ 7530. Guaranteed energy cost savings contracts.

School districts, notwithstanding any other provision of this Code, are authorized to enter into long term contracts known as 'guaranteed energy cost savings'. They are empowered to use their annual Division II energy appropriations to cover the costs of the contract. All such contracts must contain provisions which allow termination of the contract by the district in the event of non-appropriation of sufficient identified funds to meet the terms of the contract. No additional State funds shall be available for this type of contract. Districts which enter into such an agreement, notwithstanding any change in regulations, shall be allowed to complete the contract using Division II energy appropriations. Where these contracts include hardware/material expenditures, such procurements will be subject to the provisions in 29 Del. Code, Chapter 69, Subchapter I whether the procurement is carried out by the district or vendor. In the event that the Division II energy appropriations are insufficient to meet the costs of the contract and energy used, districts shall be required to use other funds available to it for the costs exceeding the appropriations. The Division of Accounting is directed to assist school districts in implementing such contracts."

Approved June 24, 1996

## CHAPTER 391

## FORMERLY

HOUSE BILL NO. 501  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 & 3

## AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE REGARDING THE CANCER CONTROL ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 32, Title 16 of the Delaware Code by striking Chapter 32 in its entirety and by substituting in lieu thereof the following:

## "CHAPTER 32. CANCER CONTROL ACT

## § 3201. Short title.

This chapter may be cited as the Delaware Cancer Control Act.

## § 3202. Purpose.

The intent of the General Assembly is to require the establishment and maintenance of a cancer registry for the State. This responsibility is delegated to the Department of Health and Social Services, along with the authority to exercise certain powers to implement this requirement. To insure an accurate and continuing source of data concerning cancer and certain specified tumors of a benign nature, the General Assembly by this Chapter requires certain health care practitioners and all hospitals, clinical laboratories, and cancer treatment centers within the State to make available to the Department of Health and Social Services information contained in the medical records of patients who have cancer or tumors of a benign nature. It is intended that the product of these efforts will be a central data bank of accurate, precise, and current information regarding the subject diseases.

## § 3203. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

(1) 'Department' means the State of Delaware Department of Health and Social Services.

(2) 'Cancer' means any malignant neoplasm, regardless of the tissue of origin, that appears on the American College of Surgeons most recently published annual list of reportable cancers and benign tumors.

(3) 'Benign tumor' means any nonmalignant neoplasm, regardless of the tissue of origin, that appears on the American College of Surgeons most recently published annual list of reportable cancers and benign tumors.

## § 3204. Cancer registry.

The Department shall adopt, promulgate, amend, and repeal any rules and regulations that are consistent with law relative to this Chapter and necessary to achieve the purpose and requirements of this Chapter. These rules and regulations shall include provisions for:

(a) the establishment and maintenance of an up-to-date registry that shall document every occurrence of cancer and of benign tumor in this State;

(b) the establishment of a procedure for reporting to the Department, within 90 days of initial diagnosis or treatment, every occurrence of cancer and of benign tumor in this State. Such procedure shall include the reporting of specified information that the Department deems necessary and appropriate for the recognition, prevention, control, or cure of cancer and benign tumors, and shall minimally include the reporting requirements of the National Cancer Data Base established by the American College of Surgeons. Those required to report to the Department occurrences of cancer and benign tumors shall include:

(1) any physician, surgeon, dentist, podiatrist, or other health care practitioner who diagnoses or provides treatment for cancer or benign tumors;

(2) the designated representative of any hospital, dispensary, asylum, or other similar public or private institution that diagnoses or provides treatment for cancer or benign tumors; and

(3) the designated representative of any laboratory that examines tissue specimens which disclose the existence of cancer or benign tumor;

(c) the establishment of a procedure for the publication and distribution of forms, instructions, and notices required by this Chapter or necessary to accomplish the purpose of this Chapter; and

(d) the establishment of a procedure to obtain follow-up information from those required to report occurrences of cancer and benign tumors pursuant to this Chapter. Any follow-up information deemed necessary by the Department shall be submitted to the Department at least one time each year by those required to report occurrences of cancer and benign tumors.

(e) The provisions of this Chapter and any rules or regulations issued pursuant to this Chapter shall not apply to any person or private institution that, as an exercise of religious freedom, treats the sick or suffering by spiritual means through prayer alone.

§ 3205. Confidentiality of reports.

(a) Any report of an occurrence of cancer or benign tumor made pursuant to this Chapter shall not be divulged nor made public in any way that might tend to disclose the identity of the person to whom it relates. However, patient-identifying information may be exchanged among cancer control agencies as authorized by the Department and upon receipt by the Department of satisfactory assurances by those agencies of the preservation of the confidentiality of such information.

(b) No individual or organization providing information to the Department in accordance with this Chapter shall be deemed to be, or held liable for, divulging confidential information.

§ 3206. Compulsion prohibited.

Nothing in this Chapter shall be construed to compel any individual to submit to any medical or public health examination, treatment, or supervision.

§ 3207. Violations.

Any person or entity who violates any provision of this chapter shall be fined \$100.00 for each violation."

Approved June 25, 1996

## CHAPTER 392

## FORMERLY

SENATE BILL NO. 408  
AS AMENDED BY SENATE AMENDMENT NO. 7

## AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO HEALTH CARE DECISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 25, Title 16, Delaware Code by striking the Chapter heading in its entirety and by inserting in lieu thereof the following: "Health-Care Decisions".

Section 2. Amend Chapter 25, Title 16, Delaware Code by deleting §§2501 and 2502 in their entirety and by inserting in lieu thereof the following:

"PREAMBLE: Nothing in this act shall be construed to condone, authorize or approve of mercy killing; to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying; or to be a method of defining or determining a technical state of death.

§2501. Definitions

(a) 'Advance health-care directive' shall mean an individual instruction or a power of attorney for health care, or both.

(b) 'Agent' shall mean an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power.

(c) 'Artificial nutrition and hydration' means supplying food and water through a conduit, such as a tube or intravenous line where the recipient is not required to chew or swallow voluntarily, including, but not limited to, nasogastric tubes, gastrostomies, jejunostomies, and intravenous infusions. Artificial nutrition and hydration does not include assisted feeding, such as spoon or bottle feeding.

(d) 'Capacity' shall mean an individual's ability to understand the significant benefits, risks, and alternatives to proposed health care, and to make and communicate a health-care decision.

(e) 'Declarant' shall mean a person who executes an advance health care directive.

(f) 'Guardian' shall mean a judicially appointed guardian or conservator having authority to make health-care decisions for an individual.

(g) 'Health care' shall mean any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition.

(h) 'Health-care decision' shall mean a decision made by an individual or the individual's agent, surrogate or guardian, regarding the individual's health care, including:

- (1) selection and discharge of health-care providers and institutions;
- (2) acceptance or refusal of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
- (3) directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care.

(i) 'Health-care institution' means an institution, facility, or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

(j) 'Health-care provider' means an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

(k) 'Individual instruction' means an individual's direction concerning a health-care decision for the individual.

(l) 'Life-sustaining procedure' means:

(1) any medical procedure, treatment, or intervention that:

(i) Utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function; and

(ii) Is of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition or permanent unconsciousness.

(2) procedures which can include, but are not limited to, assisted ventilation, renal dialysis, surgical procedures, blood transfusions, and the administration of drugs, antibiotics, and artificial nutrition and hydration.

(m) 'Medically ineffective treatment' means that, to a reasonable degree of medical certainty, a medical procedure will not:

(1) Prevent or reduce the deterioration of the health of an individual; or

(2) Prevent the impending death of an individual.

(n) 'Person' means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(o) 'Physician' means an individual authorized to practice medicine under Chapter 17 of Title 24.

(p) 'Power of attorney for health care' means the designation of an agent to make health-care decisions for the individual granting the power.

(q) 'Primary physician' or 'attending physician' shall mean a physician designated by an individual or the individual's agent, surrogate or guardian, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

(r) 'Qualifying condition' means the existence of one or more of the following conditions in the patient certified in writing in the patient's medical record, by the attending physician, and by at least one other physician who, when the condition in question is 'permanently unconscious' shall be a board-certified neurologist and/or neurosurgeon:

(1) 'Terminal condition' means any disease, illness or condition sustained by any human being for which there is no reasonable medical expectation of recovery and which, as a medical probability, will result in the death of such human being regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes.

(2) 'Permanently unconscious' or 'permanent unconsciousness' means a medical condition that has existed for at least 4 weeks and that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and

irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma.

(s) 'Reasonably available' shall mean readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health-care needs.

(t) 'Supervising health-care provider' shall mean the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health-care provider who has undertaken primary responsibility for an individual's health care.

(u) 'Surrogate' means an adult individual or individuals who (1) have capacity; (2) are reasonably available; (3) are willing to make health care decisions, including decisions to initiate, refuse to initiate, continue or discontinue the use of a life sustaining procedure on behalf of a patient who lacks capacity; and, (4) are identified by the attending physician in accordance with the provisions of this Chapter as the person or persons who are to make those decisions in accordance with the provisions of this Chapter.

#### §2502. Right of Self Determination

An individual, legally adult, who is mentally competent, has the right to refuse medical or surgical treatment if such refusal is not contrary to existing public health laws."

Section 3. Amend Chapter 25, Title 16, Delaware Code by striking §§2503, 2504 and 2505 in their entirety, by renumbering §§2506, 2507, and 2508 as §§2511, 2512 and 2513 respectively and by inserting therein the following:

#### "§2503. ADVANCE HEALTH-CARE DIRECTIVES.

(a) Subject to the limitations of this chapter, an adult who is mentally competent may:

(1) give an individual instruction. The instruction may be limited to take effect only if a specified condition arises; and/or

(2) execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity.

(b)(1) An advance health-care directive must be:

a. In writing;

b. Signed by the declarant, or by another person in the declarant's presence and at the declarant's expressed direction;

c. Dated;

d. Signed in the presence of 2 or more adult witnesses neither of whom:

i. Is related to the declarant by blood, marriage or adoption;

ii. Is entitled to any portion of the estate of the declarant under any will or trust of the declarant or codicil thereto then existing nor, at the time of the executing of the power of attorney for health care, is entitled thereto by operation of law then existing;

iii. Has, at the time of the execution of the advance health care directive, a present or inchoate claim against any portion of the estate of the declarant;

iv. Has a direct financial responsibility for the declarant's medical care; or

v. Has a controlling interest in or is an operator or an employee of a health care institution at which the declarant is a patient or resident.

(2) Each witness to the advance health-care directive shall state in writing that he or she is not prohibited under this section from being a witness.

(c) An advance health-care directive shall become effective only upon a determination that the declarant lacks capacity, and when the advance health-care directive is to be applied to the providing, withholding or withdrawal of a life-sustaining procedure, the advance health-care directive shall become effective only upon a determination that the declarant lacks capacity and has a qualifying condition.

(d) An advance health-care directive ceases to be effective upon a determination that the declarant has recovered capacity.

(e) A determination that an individual lacks or has recovered capacity that affects an individual instruction or the authority of an agent, must be made by the primary physician or other physician(s) as specified in a written health-care directive; however, a power of attorney for health care may include a provision accommodating an individual's religious or moral beliefs. That provision may designate a person other than a physician to certify in a notarized document that the individual lacks or has recovered capacity.

(f) An agent shall make a health-care decision to treat, withdraw or withhold treatment on behalf of the patient after consultation with the attending physician or with the person other than a physician, designated pursuant to subsection (e) of this section, and in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. If the patient's instructions or wishes are not known or clearly applicable, the agent's decision shall conform as closely as possible to what the patient would have done or intended under the circumstances. To the extent that the agent knows or is able to determine, the agent's decision is to take into account, including, but not limited to, the following factors if applicable:

(i) the patient's personal, philosophical, religious and ethical values;

(ii) the patient's likelihood of regaining decision making capacity;

(iii) the patient's likelihood of death;

(iv) the treatment's burdens on and benefits to the patient; and

(v) reliable oral or written statements previously made by the patient, including but not limited to, statements made to family members, friends, health care providers or religious leaders.

If the agent is unable to determine what the patient would have done or intended under the circumstances, the agent's decision shall be made in the best interest of the patient. To the extent the agent knows and is able to determine, the agent's decision is to take into account, including but not limited to, the factors, if applicable, stated in this subsection.

(g) A health-care decision made by an agent for a principal is effective without judicial approval.

(h) Unless related to the principal by blood, marriage, or adoption, an agent may not have a controlling interest in or be an operator, or employee of a residential long-term health-care institution at which the principal is receiving care.

(i) A written advance health-care directive may include the individual's nomination of a guardian of the person.

(j) A life-sustaining procedure may not be withheld or withdrawn from a patient known to be pregnant, so long as it is probable that the fetus will develop to be viable outside the uterus with the continued application of a life-sustaining procedure.

#### §2504. REVOCATION OF ADVANCE HEALTH-CARE DIRECTIVE.

(a) An individual who is mentally competent may revoke all or part of an advance health-care directive

(1) by a signed writing, or

(2) in any manner that communicates an intent to revoke done in the presence of two competent persons, one of whom is a health care provider.

(b) Any revocation that is not in writing shall be memorialized in writing and signed and dated by both witnesses. This record shall be made a part of the medical record.

(c) Any person, including but not limited to a health care provider, agent or guardian, who is informed of a revocation shall immediately communicate the fact of the revocation to the supervising health-care provider and to any health-care institution at which the patient is receiving care.

(d) A decree of annulment, divorce, dissolution of marriage, or a filing of a petition for divorce revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in a power of attorney for health care.

(e) An advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict.

(f) The initiation of emergency treatment shall be presumed to represent a suspension of an advance health-care directive while receiving such emergency treatment.

#### §2505. OPTIONAL FORM

The following form may, but need not, be used to create an advance health-care directive. The other sections of this Chapter govern the effect of this or any other writing used to create an advance health-care directive. An individual may complete or modify all or any part of the following form:

#### ADVANCE HEALTH-CARE DIRECTIVE

#### EXPLANATION

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding anatomical gifts and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions. You may also name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, an agent may not have a controlling interest in or be an operator, or employee of a residential long-term health-care institution at which you are receiving care.

If you do not have a qualifying condition (terminal illness/injury or permanent unconsciousness), your agent may make all health-care decisions for you except for decisions providing, withholding or withdrawing of a life sustaining procedure. Unless you limit the agent's authority, your agent will have the right to:

(a) consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition unless it's a life-sustaining procedure or otherwise required by law.

(b) select or discharge health-care providers and health-care institutions;

If you have a qualifying condition, your agent may make all health-care decisions for you including but not limited to:

- (c) The decisions listed in (a) and (b).
- (d) Consent or refuse consent to life sustaining procedures, such as, but not limited to, cardiopulmonary resuscitation and orders not to resuscitate.
- (e) Direct the providing, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional instructions for other than end of life decisions.

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. It is required that two other individuals sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care, and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any time.

#### PART 1: POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

---

(name of individual you choose as agent)

---

(address) (city) (state) (zip code)

---

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health-care decision for me, I designate as my first alternate agent: \_\_\_\_\_

(name of individual you choose as first alternate agent)

---

(address) (city) (state) (zip code)

---

(home phone)

(work

phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

\_\_\_\_\_  
(name of individual you choose as second alternate agent)

\_\_\_\_\_  
(address) (city) (state) (zip code)

\_\_\_\_\_  
(home phone) (work phone)

(2) AGENT'S AUTHORITY: If I am not in a qualifying condition my agent is authorized to make all health-care decisions for me, except decisions about life-sustaining procedures and as I state here; and if I am in a qualifying condition, my agent is authorized to make all health-care decisions for me, except as I state here:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional sheets if necessary.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines I lack the capacity to make my own health-care decisions. As to decisions concerning the providing, withholding and withdrawal of life-sustaining procedures my agent's authority becomes effective when my primary physician determines I lack the capacity to make my own health-care decisions and my primary physician and another physician determine I am in a terminal condition or permanently unconscious.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, (please check one):

I nominate the agent(s) whom I named in this form in the order designated to act as guardian.

I nominate the following to be guardian in the order designated:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I do not nominate anyone to be guardian.

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: If I am in a qualifying condition, I direct that my health-care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

**Choice Not To Prolong Life**

I do not want my life to be prolonged if: (please check all that apply)

\_\_\_\_\_ (i) I have a terminal condition (an incurable condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, makes death imminent and from which, despite the application of life-sustaining procedures, there can be no recovery) and regarding artificial nutrition and hydration,

I make the following specific directions:      I want used                      I do not want used

Artificial nutrition through a conduit                      \_\_\_\_\_                      \_\_\_\_\_

Hydration through a conduit                      \_\_\_\_\_                      \_\_\_\_\_

\_\_\_\_\_ (ii) I become permanently unconscious (a medical condition that has been diagnosed in accordance with currently accepted medical standards that has lasted at least 4 weeks and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma) and regarding artificial nutrition and hydration,

I make the following specific directions:      I want used                      I do not want used

Artificial nutrition through a conduit                      \_\_\_\_\_                      \_\_\_\_\_

Hydration through a conduit                      \_\_\_\_\_                      \_\_\_\_\_

**Choice To Prolong Life**

\_\_\_\_\_ I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

RELIEF FROM PAIN: Except as I state in the following space, I direct treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(7) OTHER MEDICAL INSTRUCTIONS: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PART 3: ANATOMICAL GIFTS AT DEATH  
(OPTIONAL)

(8) I am mentally competent and 18 years or more of age.

I hereby make this anatomical gift to take effect upon my death. The marks in the appropriate squares and words filled into the blanks below indicate my desires.

I give:  my body;  any needed organs or parts;  the following organs or parts \_\_\_\_\_

To the following person or institutions  the physician in attendance at my death;  the hospital in which I die;  the following named physician, hospital, storage bank or other medical institution \_\_\_\_\_;  the following individual for treatment \_\_\_\_\_; for the following purposes:  any purpose authorized by law;  transplantation;  therapy;  research;  medical education.

Part 4: PRIMARY PHYSICIAN  
(OPTIONAL)

(9) I designate the following physician as my primary physician:

\_\_\_\_\_  
(name of physician)

\_\_\_\_\_  
(address) (city) (state) (zip code)

\_\_\_\_\_  
(phone)

OPTIONAL: If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

\_\_\_\_\_  
(name of physician)

\_\_\_\_\_  
(address) (city) (state) (zip)

\_\_\_\_\_  
(phone)

Primary Physician shall mean a physician designated by an individual or the individual's agent or guardian, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

(10) EFFECT OF COPY: A copy of this form has the same effect as the original.

(11) SIGNATURE: Sign and date the form here: I understand the purpose and effect of this document.

\_\_\_\_\_

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: If I am in a qualifying condition, I direct that my health-care providers and others involved in my care *provide, withhold, or withdraw treatment* in accordance with the choice I have marked below:

**Choice Not To Prolong Life**

I do not want my life to be prolonged if: (please check all that apply)

\_\_\_\_\_ (i) I have a terminal condition (an incurable condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, makes death imminent and from which, despite the application of life-sustaining procedures, there can be no recovery) and regarding artificial nutrition and hydration,

I make the following specific directions:    I want used                    I do not want used

Artificial nutrition through a conduit                    \_\_\_\_\_                    \_\_\_\_\_

Hydration through a conduit                    \_\_\_\_\_                    \_\_\_\_\_

\_\_\_\_\_ (ii) I become permanently unconscious (a medical condition that has been diagnosed in accordance with currently accepted medical standards that has lasted at least 4 weeks and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma) and regarding artificial nutrition and hydration,

I make the following specific directions:    I want used                    I do not want used

Artificial nutrition through a conduit                    \_\_\_\_\_                    \_\_\_\_\_

Hydration through a conduit                    \_\_\_\_\_                    \_\_\_\_\_

**Choice To Prolong Life**

\_\_\_\_\_ I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

RELIEF FROM PAIN: Except as I state in the following space, I direct treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(7) OTHER MEDICAL INSTRUCTIONS: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PART 3: ANATOMICAL GIFTS AT DEATH  
(OPTIONAL)

(8) I am mentally competent and 18 years or more of age.

I hereby make this anatomical gift to take effect upon my death. The marks in the appropriate squares and words filled into the blanks below indicate my desires.

I give:  my body;  any needed organs or parts;  the following organs or parts \_\_\_\_\_

To the following person or institutions  the physician in attendance at my death;  the hospital in which I die;  the following named physician, hospital, storage bank or other medical institution \_\_\_\_\_;  the following individual for treatment \_\_\_\_\_; for the following purposes:  any purpose authorized by law;  transplantation;  therapy;  research;  medical education.

Part 4: PRIMARY PHYSICIAN  
(OPTIONAL)

(9) I designate the following physician as my primary physician:

\_\_\_\_\_  
(name of physician)

\_\_\_\_\_  
(address) (city) (state) (zip code)

(phone)

OPTIONAL: If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

\_\_\_\_\_  
(name of physician)

\_\_\_\_\_  
(address) (city) (state) (zip)

(phone)

Primary Physician shall mean a physician designated by an individual or the individual's agent or guardian, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

(10) EFFECT OF COPY: A copy of this form has the same effect as the original.

(11) SIGNATURE: Sign and date the form here: I understand the purpose and effect of this document.

\_\_\_\_\_

(date)

(sign your name)

\_\_\_\_\_

\_\_\_\_\_

(address)

(Print your name)

\_\_\_\_\_

(city)

(state) (zip code)

(12) SIGNATURES OF WITNESSES:

Statement Of Witnesses

SIGNED AND DECLARED by the above-named declarant as and for his/her written declaration under 16 Del.C. §§ 2502, 2503, in our presence, who in his/her presence, at his/her request, and in the presence of each other, have hereunto subscribed our names as witnesses, and state:

A. That the Declarant is mentally competent.

B. That neither of them:

1. Is related to the declarant by blood, marriage or adoption;

2. Is entitled to any portion of the estate of the declarant under any will of the declarant or codicil thereto then existing nor, at the time of the executing of the advance health care directive, is so entitled by operation of law then existing;

3. Has, at the time of the execution of the advance health-care directive, a present or inchoate claim against any portion of the estate of the declarant;

4. Has a direct financial responsibility for the declarant's medical care;

5. Has a controlling interest in or is an operator or an employee of a residential long-term health-care institution in which the declarant is a resident; or

6. Is under eighteen years of age;

C. That if the declarant is a resident of a sanitarium, rest home, nursing home, boarding home or related institution, one of the witnesses, \_\_\_\_\_, is at the time of the execution of the advance health-care directive, a patient advocate or ombudsman designated by the Division of Services for Aging and Adults with Physical Disabilities or the Public Guardian.

First witness

Second Witness

\_\_\_\_\_

(print name)

(print name)

\_\_\_\_\_

(address) (city, state, zip code)

(address) (city, state, zip code)

(signature of witness) (date)

(signature of witness) (date)

I am not prohibited by §2503 of  
Title 16 of the Delaware Code  
from being a witness.

I am not prohibited by §2503 of  
Title 16 of the Delaware Code  
from being a witness.

A guardian shall comply with the adult disabled person's individual instructions and may not revoke the adult disabled person's advance health-care directive unless the appointing court expressly so authorizes. Nothing in this Chapter shall limit the jurisdiction of the Court of Chancery over the person and property of a disabled person.

#### §2507. SURROGATES

(1) A surrogate may make a health care decision to treat, withdraw or withhold treatment for an adult patient if the patient has been determined by the attending physician to lack capacity and there is no agent or guardian or if the directive does not address the specific issue. This determination shall be confirmed in writing in the patient's medical record by the attending physician. Without this determination and confirmation the patient is presumed to have capacity and may give or revoke an advance health care directive or disqualify a surrogate.

(2)(a) A mentally competent patient may designate any individual to act as a surrogate by personally informing the supervising health-care provider in the presence of a witness. The designated surrogate may not act as a witness. The designation of the surrogate shall be confirmed in writing in the patient's medical record by the supervising health-care provider and signed by the witness.

(b) In the absence of a designation, or if the designee is not reasonably available, any member of the following classes of the patient's family who is reasonably available, in the descending order of priority, may act, when permitted by this section, as a surrogate and shall be recognized as such by the supervising health-care provider:

1. The spouse, unless a petition for divorce has been filed, or unless the patient has filed a petition or complaint alleging abuse, as defined in 10 Del.C. §1041(1), of the patient by the spouse;

2. An adult child;

3. A parent;

4. An adult brother or sister; or,

5. An adult grandchild.

(c) If none of the individuals eligible to act as a surrogate under subsection (b) of this section is reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available may make health care decisions to treat, withdraw or withhold treatment on behalf of the patient if appointed as a guardian for that purpose by the Court of Chancery.

(d) A supervising health-care provider may require an individual claiming the right to act as a surrogate for a patient to provide a written declaration under the penalty of perjury stating facts and circumstances sufficient to establish the claimed authority.

(e) A mentally competent patient may at any time disqualify a member of his or her family from acting as his or her surrogate by a signed writing or by personally informing the health-care provider of the disqualification.

(f) A surrogate may make a decision to provide, withhold or withdraw a life-sustaining procedure, if the patient has a qualifying condition documented in writing with its nature and cause, if known, in the patient's medical record by the attending physician.

(g) A surrogate's decision on behalf of the patient to treat, withdraw or withhold treatment shall be made according to the following paragraphs and otherwise meet the requirements of this Chapter:

1. Decisions shall be made in consultation with the attending physician.

2. (1) The surrogate shall make a health-care decision to treat, withdraw or withhold treatment in accordance with the patient's individual instructions, if any, and other wishes to the extent known by the surrogate.

(2) If the patient's instructions or wishes are not known or clearly applicable, the surrogate's decision shall conform as closely as possible to what the patient would have done or intended under the circumstances. To the extent the surrogate knows or is able to determine, the surrogate's decision is to take into account, including but not limited to, the following factors if applicable:

- (i) the patient's personal, philosophical, religious and ethical values,
- (ii) the patient's likelihood of regaining decision making capacity,
- (iii) the patient's likelihood of death,
- (iv) the treatment's burdens on and benefits to the patient,
- (v) reliable oral or written statements previously made by the patient, including, but not limited to, statements made to family members, friends, health care providers or religious leaders.

(3) If the surrogate is unable to determine what the patient would have done or intended under the circumstances, the surrogate's decision shall be made in the best interest of the patient. To the extent the surrogate knows and is able to determine, the surrogate's decision is to take into account, including but not limited to, the factors, if applicable, stated in subsection (h)2(2) of this section.

(i) In the event an individual specified in subsection (b) of this section claims that he or she has not been recognized or consulted as a surrogate, or if persons with equal decision making priority under subsection (b) of this section cannot agree who shall be a surrogate or disagree about a health-care decision, and a patient who lacks capacity is receiving care in a health-care institution, the attending physician or an individual specified in subsection (b) of this section may refer the case to an appropriate committee of the health-care institution for a recommendation in compliance with the provisions of this Chapter, and the attending physician may act in accordance with the recommendation of the committee or transfer the patient in accordance with the provisions of Section 2508 (g) of this Chapter. A physician who acts in accordance with the recommendation of the committee is not subject to civil or criminal liability or to discipline for unprofessional conduct for any claim based on lack of consent or authorization for the action.

#### §2508. OBLIGATIONS OF HEALTH-CARE PROVIDER.

(a) Before implementing a health-care decision made for a patient, a supervising health-care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision. The decision of an agent or surrogate does not apply if the patient objects to the decision to remove life-sustaining treatment, providing that the objection is (1) by a signed writing or (2) in any manner that communicates in the presence of two competent persons, one of whom is a physician.

(b) A supervising health-care provider who knows of the existence of an advance health-care directive or a revocation of an advance health-care directive shall promptly record its existence in the patient's health-care record and, if it is in writing, shall request a copy and if it is not in writing, shall request a copy of the witness statement, and shall arrange for its maintenance in the health-care record.

(c) A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, surrogate or guardian, shall promptly record the determination in the

patient's health-care record and communicate the determination to the patient, if possible, and to any person then authorized to make health-care decisions for the patient.

(d) Except as provided in subsections (e) and (f) of this section, a health-care provider or institution providing care to a patient shall:

(1) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient; and

(2) in the absence of an individual instruction comply with a health-care decision for the patient made by a person then authorized to make health-care decisions for the patient to the extent the agent or surrogate is permitted by this Chapter.

(e) A health-care provider may decline to comply with an individual instruction or health-care decision for reasons of conscience. A health-care institution may decline to comply with an individual instruction or health-care decision if the instruction or decision is contrary to a written policy of the institution which is based on reasons of conscience and if the policy was communicated to the patient or to a person then authorized to make health-care decisions for the patient.

(f) A health-care provider or institution may decline to comply with an individual instruction or health-care decision that requires medically ineffective treatment or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(g) A health-care provider or institution that declines to comply with an individual instruction or health-care decision shall:

(1) promptly so inform the patient, if possible, and any person then authorized to make health-care decisions for the patient;

(2) provide continuing care, including continuing life sustaining care, to the patient until a transfer can be effected; and

(3) not impede the transfer of the patient to another health-care provider or institution identified by the patient, his or her agent or surrogate.

#### §2509. HEALTH-CARE INFORMATION.

Unless otherwise specified in an advance health-care directive, a person then authorized to make health-care decisions for a patient has the same rights as the patient to request, receive, examine, copy and consent to the disclosure of medical or any other health-care information.

#### §2510. IMMUNITIES.

(a) A health-care provider or institution acting in good faith and in accordance with generally accepted health-care standards applicable to the health-care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(1) complying with a health-care decision of a person apparently having authority to make a health-care decision for a patient, including a decision to withhold or withdraw health care;

(2) declining to comply with a health-care decision of a person based on a belief that the person then lacked authority;

(3) complying with an advance health-care directive and assuming that the directive was valid when made and has not been revoked or terminated;

(4) providing life-sustaining treatment in an emergency situation when the existence of a health care directive is unknown; or

(5) declining to comply with a health care decision or advance health-care directive because the instruction is contrary to the conscience or good faith medical judgment of the health care provider or the written policies of the institution.

(b) An individual acting as agent or surrogate under this Chapter is not subject to civil or criminal liability or to discipline for unprofessional conduct for health-care decisions made in good faith."

Section 4. Amend newly designated §2511, Title 16, Delaware Code by deleting subsection (b) in its entirety and by deleting the phrases "a maintenance medical treatment", "a declaration", "any declaration", "Such declaration" and "the declaration" as they appear therein and by inserting in lieu thereof the phrases "health care", "an advance health-care directive", "any advance health-care directive" "Such advance-care directive", and "the advance health-care directive" respectively.

Section 5. Amend newly designated §2512, Title 16, Delaware Code by deleting the phrases "a declaration" and "maintenance medical treatment" wherever they appear therein, by inserting in lieu thereof the phrases "an advance health-care directive" and "health care" respectively, and by adding at the end of the last sentence thereof the phrase "except as provided in §2508 of this Chapter."

Section 6. Amend newly designated §2513(a), Title 16, Delaware Code by deleting the last sentence thereof in its entirety.

Section 7. Amend Chapter 25, Title 16, Delaware Code by adding the following:

“§2513. CAPACITY.

(a) This Chapter does not affect the right of an individual to make health-care decisions while having capacity to do so.

(b) An individual is presumed to have capacity to make a health-care decision, and to give or revoke an advance health-care directive.

§2514. ACCOMMODATION.

Notwithstanding any provision of this chapter, an individual who elects to have treatment by spiritual means in lieu of medical or surgical treatment shall not be compelled to submit to medical or surgical treatment.

§2515. EFFECT OF COPY.

A copy of an advance health-care directive or revocation of an advance health-care directive, has the same effect as the original.

§2516. RECOGNITION OF ADVANCE DIRECTIVES EXECUTED IN OTHER STATES.

An advance directive or similar health-care declaration validly executed under the laws of another state in compliance with the laws of that state or of this state is valid for purposes of and subject to the limitations of, this Chapter.

§2517. EFFECT ON PRIOR DECLARATIONS AND DIRECTIVES.

Nothing in this Act shall be construed to modify or affect the terms of any declaration, appointment of agent or durable power of attorney, validly executed prior to the effective date of this Act, which grants the authority for medical treatment or directs the withholding or withdrawal of medical treatment, except that a prior declaration shall not be interpreted to allow the withdrawal or withholding of artificial nutrition or hydration unless that desire is specifically stated in that directive. If withdrawal or withholding of artificial nutrition or hydration is not specifically addressed in a prior declaration, a health care provider shall comply with a decision regarding withdrawal or withholding of artificial nutrition or hydration

for the patient made by a person then authorized to make health-care decisions for the patient to the extent the agent or surrogate is permitted by this Chapter.”

**Section 8. Severability**

If any provision of this Act or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not affect the provisions or application of this Act that can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

Approved June 26, 1996

## CHAPTER 393

## FORMERLY

## HOUSE BILL NO. 444

## AN ACT TO AMEND PART V, TITLE 12 OF THE DELAWARE CODE RELATING TO FIDUCIARY RELATIONS; AND PROVIDING FOR A UNIFORM TRANSFERS TO MINORS ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 45, Part V, Title 12 of the Delaware Code by striking said chapter in its entirety, and substituting in lieu thereof the following:

"CHAPTER 45. DELAWARE UNIFORM TRANSFERS TO MINORS ACT.

§ 4501. Definitions.

In this chapter:

- (1) 'Adult' means an individual who has attained the age of 21 years.
- (2) 'Benefit plan' means an employer's plan for the benefit of an employee or partner.
- (3) 'Broker' means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
- (4) 'Conservator' means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
- (5) 'Court' means Court of Chancery.
- (6) 'Custodial property' means (i) of any interest in property transferred to a custodian under this chapter and (ii) the income from and proceeds of that interest in property.
- (7) 'Custodian' means a person so designated under Section 4509 of this chapter or a successor or substitute custodian designated under Section 4518 of this chapter.
- (8) 'Financial institution' means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
- (9) 'Legal representative' means an individual's personal representative or conservator.
- (10) 'Member of the minor's family' means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half-blood or by adoption.
- (11) 'Minor' means an individual who has not attained the age of 21 years.
- (12) 'Person' means an individual, corporation, organization, or other legal entity.
- (13) 'Personal representative' means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) 'State' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) 'Transfer' means a transaction that creates custodial property under Section 4509.

(16) 'Transferor' means a person who makes a transfer under this chapter.

(17) 'Trust company' means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

§ 4502. Scope and Jurisdiction.

(a) This chapter applies to a transfer that refers to this chapter in the designation under Section 4509(a) of this chapter by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this State or the custodial property is located in this State. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this State.

(b) A person designated as custodian under this chapter is subject to personal jurisdiction in this State with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act, of another state is governed by the law of the designated state and may be executed and is enforceable in this State if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

§ 4503. Nomination of Custodian.

(a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: 'as custodian for \_\_\_\_\_ (name of minor) under the Delaware Uniform Transfers to Minors Act.' The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under Section 4509(a) of this chapter.

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under Section 4509 of this chapter. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to Section 4509 of this chapter.

§ 4504. Transfer by Gift or Exercise of Power of Appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to Section 4509 of this chapter.

§ 4505. Transfer Authorized by Will or Trust.

(a) A personal representative or trustee may make an irrevocable transfer pursuant to Section 4509 of this chapter to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under Section 4503 of this chapter to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has nominated a custodian under Section 4503 of this chapter, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under Section 4509(a) of this chapter.

§4506. Other Transfer by Fiduciary.

(a) Subject to subsection (c) of this section, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to Section 4509 of this chapter, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c) of this section, a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to Section 4509 of this chapter.

(c) A transfer under subsection (a) or (b) of this section may be made only if (i) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor; (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and (iii) the transfer is authorized by the court if it exceeds \$10,000 in value.

§ 4507. Transfer by Obligor.

(a) Subject to subsections (b) and (c) of this section, a person not subject to Section 4505 or 4506 of this chapter who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to Section 4509 of this chapter.

(b) If a person having the right to do so under Section 4503 of this chapter has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If no custodian has been nominated under Section 4503 of this chapter, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$10,000 in value.

§4508. Receipt for Custodial Property.

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this chapter.

§ 4509. Manner of Creating Custodial Property and Effecting Transfer: Designation of Initial Custodian; Control.

(a) Custodial property is created and a transfer is made whenever:

(1) an uncertificated security or a certificated security in registered form is either:

(A) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as

custodian for \_\_\_\_\_ (name of minor) under the Delaware Uniform Transfers to Minors Act'; or

(B) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b) of this section;

(2) money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: 'as custodian for \_\_\_\_\_ (name of minor) under the Delaware Uniform Transfers to Minors Act';

(3) the ownership of a life or endowment insurance policy or annuity contract is either:

(A) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: 'as custodian for \_\_\_\_\_ (name of minor) under the Delaware Uniform Transfers to Minors Act'; or

(B) assigned in writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: 'as custodian for \_\_\_\_\_ (name of minor) under the Delaware Uniform Transfers to Minors Act';

(4) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: 'as custodian for \_\_\_\_\_ (name of minor) under the Delaware Uniform Transfers to Minors Act';

(5) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: 'as custodian for \_\_\_\_\_ (name of minor) under the Delaware Uniform Transfers to Minors Act';

(6) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(A) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: 'as custodian for \_\_\_\_\_ (name of minor) under the Delaware Uniform Transfers to Minors Act'; or

(B) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: 'as custodian for \_\_\_\_\_ (name of minor) under the Delaware Uniform Transfers to Minors Act'; or

(7) an interest in any property not described in paragraphs (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b) of this section.

(b) An instrument in the following form satisfies the requirements of paragraphs (1)(B) and (7) of subsection (a) of this section:

'TRANSFER UNDER THE DELAWARE UNIFORM  
TRANSFERS TO MINORS ACT

I, \_\_\_\_\_ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to \_\_\_\_\_ (name of custodian), as custodian for \_\_\_\_\_ (name of minor) under the Delaware Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Delaware Uniform Transfers to Minors Act.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Custodian)

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

§ 4510. Single Custodianship.

A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

§ 4511. Validity and Effect of Transfer.

(a) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(1) failure of the transferor to comply with Section 4509(c) of this chapter concerning possession and control;

(2) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under Section 4509(a) of this chapter; or

(3) death or incapacity of a person nominated under Section 4503 or designated under Section 4509 of this chapter as custodian or the disclaimer of the office by that person.

(b) A transfer made pursuant to Section 4509 of this chapter is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter.

§ 4512. Care of Custodial Property.

(a) A custodian shall:

- (1) take control of custodial property;
- (2) register or record title to custodial property if appropriate; and
- (3) collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another in accordance with the standard of care set forth in 12 Del. C. § 3302 and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (ii) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: 'as a custodian for \_\_\_\_\_ (name of minor) under the Delaware Uniform Transfers to Minors Act.'

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of 14 years.

#### § 4513. Powers of Custodian.

(a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of Section 4512 of this chapter.

#### § 4514. Use of Custodial Property.

(a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (i) the duty or ability of the custodian personally or of any other person to support the minor, or (ii) any other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or the minor if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

§ 4515. Custodian's Expenses, Compensation, and Bond.

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under Section 4504 of this chapter, a custodian has a non-cumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in Section 4518(f) of this chapter, a custodian need not give a bond.

§ 4516. Exemption of Third Person from Liability.

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

- (1) the validity of the purported custodian's designation;
- (2) the propriety of, or the authority under this chapter for, any act of the purported custodian;
- (3) the validity of propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or
- (4) the propriety of the application of any property of the minor delivered to the purported custodian.

§ 4517. Liability to Third Persons.

(a) A claim based on (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property, or (iii) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian is not personally liable:

- (1) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or
- (2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

§ 4518. Renunciation, Resignation, Death, or Removal of Custodian; Designation of Successor Custodian.

(a) A person nominated under Section 4503 of this chapter or designated under Section 4509 of this chapter as custodian may decline to serve by delivering a written disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under Section

4503 of this chapter, the person who made the nomination may nominate a substitute custodian under Section 4503; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under Section 4509(a) of this chapter. The custodian so designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under Section 4504 of this chapter as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subsection (b) of this Section, an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) or resigns under subsection (c) of this Section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under Section 4504 of this chapter or to require the custodian to give appropriate bond.

§ 4519. Accounting by and Determination of Liability of Custodian.

(a) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the Court (i) for an accounting by the custodian or the custodian's legal representative; or (ii) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under Section 4517 of this chapter to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under Section 4518(f) of this chapter, the court shall require an accounting and order delivery of the custodial property and records to the

successor custodian and the execution of all instruments required for transfer of the custodial property.

§ 4520. Termination of Custodianship.

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

- (1) the minor's attainment of 21 years of age with respect to custodial property transferred under Section 4504 or 4505 of this chapter;
- (2) the minor's attainment of 18 years of age with respect to custodial property transferred under Section 4506 or 4507 of this chapter; or
- (3) the minor's death.

§ 4521. Applicability.

This chapter applies to a transfer within the scope of Section 4502 of this chapter made after its effective date if:

- (1) the transfer purports to have been made under the Delaware Uniform Gifts to Minors Act; or
- (2) the instrument by which the transfer purports to have been made uses in substance the designation 'as custodian under the Uniform Gifts to Minors Act' or 'as custodian under the Uniform Transfers to Minors Act' of any other state, and the application of this chapter is necessary to validate the transfer.

§ 4522. Effect on Existing Custodianships.

(a) Any transfer of custodial property as now defined in this chapter made before the effective date of this chapter is validated notwithstanding that there was no specific authority in the Delaware Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This chapter applies to all transfers made before the effective date of this chapter in a manner and form prescribed in the Delaware Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this chapter.

(c) Sections 4501 and 4520 of this chapter with respect to the age of a minor for whom custodial property is held under this chapter do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 after January 1, 1975, and before the effective date of this chapter.

§ 4523. Short Title.

This chapter may be cited as the 'Delaware Uniform Transfers to Minors Act.'

Section 2. If any provisions of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end provisions of this chapter are severable.

Section 3. The Delaware Gifts to Minors Act set forth in Chapter 45, Part V, Title 12 of the Delaware Code is hereby repealed. To the extent that this chapter, by virtue of Section 4522(b), does not apply to transfers made in a manner prescribed in the Delaware Gifts to Minors Act or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the Delaware Gifts to Minors Act does not affect those transfers or those powers, duties, and immunities.

## CHAPTER 394

## FORMERLY

## HOUSE BILL NO. 443

AN ACT TO AMEND PART III, TITLE 12 OF THE DELAWARE CODE RELATING TO DESCENT AND DISTRIBUTION; AND PROVIDING FOR A UNIFORM TOD SECURITY REGISTRATION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

chapter, to read:

“Chapter 8. UNIFORM TOD SECURITY REGISTRATION ACT

§ 801. Definitions.

In this chapter, unless the context otherwise requires:

(1) ‘Beneficiary form’ means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) ‘Devisee’ means any person designated in a will to receive a disposition of real or personal property.

(3) ‘Heirs’ means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(4) ‘Person’ means an individual, a corporation, an organization, or other legal entity.

(5) ‘Personal representative’ includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) ‘Property’ includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(7) ‘Register,’ including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) ‘Registering entity’ means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) ‘Security’ means a share, participation, or other interest in property, in Section 1. Amend Part III, Title 12 of the Delaware Code by inserting a new a business, or in the obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(10) ‘Security account’ means (A) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner’s death, or (B) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner’s death.

(11) 'State' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

§ 802. Registration in Beneficiary Form: Sole or Joint Tenancy Ownership.

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

§ 803. Registration in Beneficiary Form: Applicable Law.

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its

office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

§ 804. Origination of Registration in Beneficiary Form.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

§ 805. Form of Registration in Beneficiary Form.

Registration in beneficiary form may be shown by the words 'transfer on death' or the abbreviation 'TOD,' or by the words 'pay on death' or the abbreviation 'POD,' after the name of the registered owner and before the name of a beneficiary.

§ 806. Effect of Registration in Beneficiary Form.

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

§ 807. Ownership on Death of Owner.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

§ 808. Protection of Registering Entity.

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this chapter.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on the death of the deceased owner as provided in this chapter.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with Section 807 of this Chapter and does so in good faith reliance (i) on the registration, (ii) on this chapter, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this chapter do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this chapter.

(d) The protection provided by this chapter to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

§ 809. Nontestamentary Transfer on Death.

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this chapter and is not testamentary.

(b) This chapter does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this State.

§ 810. Terms, Conditions, and Forms for Registration.

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for 'lineal descendants per stirpes.' This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown, Jr.

(2) Multiple owners-sole beneficiary: John S. Brown, Mary

B. Brown, JT TEN TOD John S. Brown, Jr.

(3) Multiple owners-primary and secondary (substituted) beneficiaries:  
John S. Brown, Mary B. Brown, JT TEN TOD John S. Brown, Jr. SUB BENE  
Peter Q. Brown or John S. Brown, Mary B. Brown JT TEN TOD John S. Brown,  
Jr. LDPS.

§ 811. Short Title.

This chapter shall be known as and may be cited as the 'Uniform TOD Security Registration Act'.

§ 812. Application of chapter.

This chapter applies to registrations of securities in beneficiary form made before or after the effective date of this chapter, by decedents dying on or after the effective date of this chapter."

Approved June 26, 1996

## CHAPTER 395

## FORMERLY

HOUSE BILL NO. 564  
AS AMENDED BY HOUSE AMENDMENT NO. 1AN ACT TO AMEND TITLE 6, DELAWARE CODE, RELATING TO THE DELAWARE  
WORKERS COOPERATIVE ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend Title 6, Delaware Code, by adding a new chapter to read as follows:

## "CHAPTER 14. DELAWARE WORKERS COOPERATIVE ACT.

## § 1401. Definitions.

As used in this chapter, unless the context otherwise requires:

(a) 'Certificate of acceptance' means a certificate of acceptance filed in accordance with § 1407 of this chapter including, except where the context requires otherwise, any amendments thereto and corrections and restatements thereof.

(b) 'Employee' means any person employed by a workers cooperative.

(c) 'Member' means any patron of a workers cooperative that has been accepted for membership in such workers cooperative and whose membership has not been terminated.

(d) 'Nonvoting stock' means any stock of a workers cooperative that, as of the time of determination, is not voting stock.

(e) 'Organizational documents' mean the certificate of incorporation of the workers cooperative, the bylaws of the workers cooperative, and agreements among the stockholders and the workers cooperative. Provisions of this chapter setting forth requirements with respect to the organizational documents shall be deemed to be satisfied if such requirements are contained in or implemented through at least one of the documents referred to in the preceding sentence.

(f) 'Patron' means any person that (i) performs (directly or indirectly) services for a workers cooperative or (ii) receives (directly or indirectly) services from a workers cooperative.

(g) 'Patronage' means services (i) performed (directly or indirectly) by a person for a workers cooperative or (ii) received by a person (directly or indirectly) from a workers cooperative.

(h) 'Person' means a natural person, partnership (whether limited or general), limited liability company, trust (whether common law or business), estate, association, corporation, custodian, nominee, or any other entity.

(i) 'Stockholder' means any person that holds stock issued by a workers cooperative.

(j) 'Voting stock' means any stock of a workers cooperative that, as of the time of determination, is entitled to vote on any matter submitted to stockholders.

(k) 'Voting trust agreement' means an agreement in writing by and among two or more stockholders and the workers cooperative with respect to the exercise of the voting rights of the voting stock held by one or more of such stockholders.

(l) 'Workers cooperative' means any corporation that (i) is incorporated under the laws of this State and (ii) files a certificate of acceptance, which certificate has been accepted for filing by the Office of the Secretary of State in accordance with § 1409 of this chapter and has become effective. A workers cooperative may be organized for any lawful business or activity.

(m) 'Written notice of allocation' means a written instrument that discloses to a member that stated dollar amount of such member's patronage allocation and the terms for payment of that amount by the workers cooperative.

#### § 1402. Operating on a Cooperative Basis.

(a) The organizational documents shall provide that the workers cooperative intends to operate on a cooperative basis and to comply with the requirements of this chapter.

(b) A workers cooperative under this chapter may perform services for and receive services from its patrons, members, stockholders, and other persons and engage in such other activities as may be reasonably related to the provision or receipt of such services. In addition, a workers cooperative may engage in any other lawful activity.

#### § 1403. Members.

(a) The organizational documents shall establish qualifications and the method of acceptance and termination of members; provided, however, that, pursuant to the organizational documents, at least a majority of the members of a workers cooperative shall be employees of the workers cooperative.

(b) Except as otherwise provided in the organizational documents, at least a majority of the employees of the workers cooperative shall be members of the workers cooperative.

#### § 1404. Ownership of Voting and Nonvoting Stock.

(a) Except as otherwise provided in the organizational documents, all voting stock shall be owned by members; provided, however, that, pursuant to the organizational documents, at least a majority of each class of voting stock shall be owned by members.

(b) The nonvoting stock of a workers cooperative may be owned by any person.

#### § 1405. Voting Rights of Members and Stockholders.

Pursuant to the organizational documents (or voting trust agreements), at least a majority of the board of directors shall be elected by the members on the basis of one member one vote.

#### § 1406. Allocation of Earnings.

(a) The net earnings of a workers cooperative shall be allocated and distributed by the board of directors in accordance with the organizational documents.

(b) Except as otherwise provided in the organizational documents, all of the net earnings of the workers cooperative with respect to a period of time shall be allocated to members on the basis of (i) patronage during such period of time, (ii) capital contributions, or (iii) some combination of patronage during such period of time and capital contributions; provided, however, that, pursuant to the organizational documents, at least a majority of the allocated earnings of the workers cooperative with respect to a period of time shall be allocated to members on the basis of (i) patronage during such

period of time, (ii) capital contributions, or (iii) some combination of patronage during such period of time and capital contributions.

(c) The allocation, distribution, and payment of earnings required by this section may be in cash, credits, written notices of allocation, or any other type of tangible or intangible property, including, without limitation, shares of stock issued by the workers cooperative.

§ 1407 Certificate of Acceptance; Amendment; Restatement; Cancellation.

(a) In order for a corporation to constitute a workers cooperative, such corporation must execute a certificate of acceptance. The certificate of acceptance shall be filed in the office of the Secretary of State and shall set forth:

(1) The name of the corporation;

(2) A statement that the provisions of §§ 1402 through 1406, inclusive, of this chapter have been complied with as of the date of such certificate;

(3) The future effective date or time (which shall be a date or time certain) of effectiveness of the certificate if it is not to be effective upon the filing of the certificate; and

(4) Any other information the workers cooperative desires to include therein.

(b) (1) A certificate of acceptance may be amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate of amendment shall set forth:

a. The name of the workers cooperative;

b. The amendment to the certificate; and

c. The future effective date or time (which shall be a date or time certain) of effectiveness of the certificate if it is not to be effective upon the filing of the certificate.

(2) A certificate of acceptance may be amended at any time for any purpose as the workers cooperative may determine. A workers cooperative that becomes aware that any statement in a certificate of acceptance was false when made or that any matter described has changed making the certificate false in any material respect, shall promptly file a certificate of amendment.

(c) (1) A certificate of acceptance may be restated by integrating into a single instrument all the provisions of the certificate of acceptance that are then in effect and operative as a result of there having been previously filed one or more certificates of amendment pursuant to subsection (b) of this section, and the certificate of acceptance may be amended or further amended by the filing of a restated certificate of acceptance. The restated certificate of acceptance shall be specifically designated as such in its heading and shall set forth:

a. The present name of the workers cooperative; and, if the name has been changed, the name of the workers cooperative at the time its original certificate of acceptance was filed under this chapter;

b. The date of filing of the original certificate of acceptance with the Secretary of State;

c. The information required to be included pursuant to subsection (a) of this section; and

d. Any other information the workers cooperative desires to include therein.

(2) A certificate of acceptance may be restated at any time for any purpose as the workers cooperative may determine. A workers cooperative that becomes aware that any statement in a restated certificate of acceptance was false when made or that any matter described has changed making the certificate false in any material respect, shall promptly file a certificate of amendment or restated certificate of acceptance.

(d) (1) A certificate of acceptance shall be canceled by a workers cooperative upon the earlier of (i) the date on which the workers cooperative shall no longer be continuing as a body corporate pursuant to the first sentence of § 278 of Title 8, and (ii) a decision to cancel the certificate of acceptance in accordance with the organizational documents (or voting trust agreements).

(2) In addition to the provisions of paragraph (1) of this subsection (d) of this section, a workers cooperative that becomes aware that it no longer complies with the requirements of this chapter shall, within 60 days after becoming aware of such noncompliance, either come into compliance or cancel its certificate of acceptance; provided, however, that if such noncompliance is corrected within such 60-day period, such noncompliance shall not affect the prior or on-going qualification of such workers cooperative under this chapter.

(3) In order to cancel its certificate of acceptance, a workers cooperative shall file a certificate of cancellation in the office of the Secretary of State, which certificate of cancellation shall set forth:

- a. The name of the workers cooperative;
- b. The date of filing of its certificate of acceptance;
- c. The future effective date or time (which shall be a date or time certain) of effectiveness of the certificate if it is not to be effective upon the filing of the certificate; and
- d. Any other information the workers cooperative desires to include therein.

The cancellation of a certificate of acceptance shall not affect the prior qualification of such workers cooperative under this chapter.

e. Whenever any certificate authorized to be filed with the office of the Secretary of State under any provision of this chapter has been so filed and is an inaccurate record of the action therein referred to, or was defectively or erroneously executed, such certificate may be corrected by filing with the office of the Secretary of State a certificate of correction of such certificate which shall be executed and filed in accordance with this chapter. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the certificate in corrected form. In lieu of filing a certificate of correction, the certificate may be corrected by filing with the office of the Secretary of State a corrected certificate which shall be executed and filed in accordance with this chapter. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected, and shall set forth the entire certificate in corrected form. A certificate corrected in accordance with this section shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the corrections, and as to those persons the corrected certificate shall be effective from the filing date.

§ 1408. Execution of Certificate.

(a) Each certificate required by this chapter to be filed in the office of the Secretary of State shall be executed by an authorized officer of the workers cooperative.

(b) Unless otherwise provided in the organizational documents, any person may sign any certificate or amendment thereof or enter into any organizational document or amendment thereof by any agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into an organizational document or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed in the office of the Secretary of State, but if in writing, must be retained by the workers cooperative.

(c) The execution of a certificate constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of the knowledge and belief of the person executing such certificate, the facts stated therein are true.

§ 1409. Filing of Certificate.

(a) The certificate of acceptance and any certificates of amendment, correction, or cancellation and of any restated certificate shall be delivered to the office of the Secretary of State for filing. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Upon receipt of all filing fees required by law, the Secretary of State shall certify that the certificate of acceptance, the certificate of amendment, the certificate of correction, the certificate of cancellation, or the restated certificate has been filed in his office by endorsing upon the filed certificate the word 'Filed,' and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud. The Secretary of State shall thereupon file and index the endorsed certificate.

(b) Upon the filing of a certificate of acceptance in the office of the Secretary of State, or upon the future effective date or time of a certificate of acceptance as provided for therein, the certificate of acceptance shall be effective. Upon the filing of a certificate of amendment, certificate of correction or restated certificate in the office of the Secretary of State, or upon the future effective date or time of a certificate of amendment or restated certificate as provided for therein, the certificate of acceptance shall be amended or restated as set forth therein. Upon the filing of a certificate of cancellation or upon the future effective date or time of a certificate of cancellation, the certificate of acceptance shall be canceled.

(c) A fee as set forth in § 1410(a)(1) of this title shall be paid at the time of the filing of a certificate of acceptance, a certificate of amendment, a certificate of correction or restated certificate.

(d) A fee as set forth in § 1410(a)(2) of this title shall be paid for a certified copy of any certificate on file as provided for by this chapter, and a fee as set forth in § 1410(a)(3) of this title shall be paid for each page copied.

(e) Any signature on any certificate authorized to be filed with the Secretary of State under any provision of this chapter may be a facsimile, a conformed signature or an electronically transmitted signature. Any such certificate may be filed by telecopy, fax or similar electronic transmission; provided, however, that the Secretary of State shall have no obligation to accept such filing if such certificate is illegible or otherwise unsuitable for processing.

§ 1410. Fees.

(a) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of this State:

(1) Upon the receipt for filing of a certificate of acceptance, a certificate of amendment, a certificate of correction, or a certificate of cancellation, a fee in the amount of \$100.

(2) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of \$20 for each copy certified. In addition, a fee of \$1 per page shall be paid in each instance where the Secretary of State provides the copies of the document to be certified.

(3) For issuing further non-certified copies, a fee in the amount of \$5 for the first page and \$1 for each additional page.

(b) In addition to those fees charged under subsection (a) of this section, there shall be collected by and paid to the Secretary of State the following:

(1) For all services described in subsection (a) of this section that are requested to be completed within two hours on the same day as the day of the request, an additional sum of up to \$500;

(2) For all services described in subsection (a) of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to \$200; and

(3) For all services described in subsection (a) of this section that are requested to be completed within a 24-hour period from the time of the request, an additional sum of up to \$100.

The Secretary of State shall establish (and may from time to time alter or amend) a schedule of specific fees payable pursuant to this subsection.

#### § 1411. Use of Names Regulated.

Without limiting the applicability of § 102(a)(1) of Title 8, the name of each workers cooperative may, but need not, contain the words 'Cooperative,' 'Workers Cooperative,' 'Worker Owned Cooperative,' 'Employees Cooperative,' or 'Employee Owned Cooperative' (or words or abbreviations of like import).

#### § 1412. Reserved Power of State to Amend or Repeal Chapter.

All provisions of this chapter may be altered from time to time or repealed, and all rights of workers cooperatives, members, patrons and stockholders thereof, and other persons are subject to this reservation.

#### § 1413. Construction and Application of Chapter.

(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(b) It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of contractual arrangements between persons.

(c) Nothing in this chapter shall be construed to limit in any way whatsoever the application of any other provision of the laws of this State relating to corporations, including, without limitation and by way of example only, the laws regarding incorporation, mergers, and dissolutions.

(d) It is intended that a workers cooperative qualified under this chapter will constitute a 'corporation operating on a cooperative basis' and an 'eligible worker owned cooperative' within the meaning of

§ 1381(a)(2) and § 1042(c)(2), respectively, of the Internal Revenue Code of 1986, as amended, or under any successor provisions.

§ 1404. Short Title.

This chapter may be cited as the "Delaware Workers Cooperative Act."

Approved June 26, 1996

CHAPTER 396

FORMERLY

HOUSE BILL NO. 495  
AS AMENDED BY HOUSE AMENDMENT NO. 1 AND  
SENATE AMENDMENT NO. 1

AN ACT PROPOSING AMENDMENT TO ARTICLE IV, § 11(1) OF THE DELAWARE CONSTITUTION OF 1897, AS AMENDED, RELATING TO THE JURISDICTION OF THE DELAWARE SUPREME COURT IN CRIMINAL CASES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Article IV, § 11(1) of the Delaware Constitution of 1897, as amended, by adding thereto a new paragraph, said paragraph to be designated as (1)(c), to read as follows:

"(1)(c) Notwithstanding any provisions of this Section to the contrary, to receive appeals from the Superior court in criminal causes, upon application by the State in all causes in which the Superior Court, or any inferior court an appeal from which lies to the Superior Court, has granted an accused any of the following: a new trial or judgment of acquittal after a verdict, modification of a verdict, arrest of judgment, relief in any post-conviction proceeding or in any action collaterally attacking a criminal judgment, or a new punishment hearing in a capital case after the court has imposed a sentence of death, or any order or judgment declaring any act of the General Assembly, or any portion of any such act, to be unconstitutional under either the Constitution of the United States or the State of Delaware, inoperative or unenforceable, except that no appeal shall lie where otherwise prohibited by the double jeopardy clause of the Constitution of the United States or of this State. Notwithstanding anything in this Article to the contrary, the General Assembly may by statute implement the jurisdiction herein conferred."

Passed June 19, 1996

## CHAPTER 397

## FORMERLY

SENATE BILL NO. 355  
AS AMENDED BY SENATE AMENDMENT NOS. 1 & 4  
HOUSE AMENDMENT NOS. 1 & 2 AND  
SENATE AMENDMENT NO. 5

AN ACT TO AMEND § 4120 OF TITLE 11 OF THE DELAWARE CODE AND TITLE 21 OF  
THE DELAWARE CODE RELATING TO SEX OFFENDERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend § 4120(a) of Title 11 of the Delaware Code by deleting the words "under subpart D of subchapter II, or subchapter V of Chapter 5 of Title 11" from said subsection and substituting in lieu thereof the following words: "specified in §§ 764 through 779 of Title 11 of the Delaware Code or any of the offenses specified in §§ 1108-1111 of Title 11 of the Delaware Code".

Section 2. Further amend § 4120(a) of Title 11 of the Delaware Code by deleting the punctuation and word ", or" the second time they appear in said sub-section and substituting in lieu thereof the following words: "shall be registered by (i) the Department of Corrections Department of Services to Children, Youth and Their Families ("DSCYF"), or the Department of Health and Social Services, as the case may be, at or prior to the time such person is released from such agency's custody, or (ii) the court at or prior to the time such person is released by a state court on probation or discharged by a state court upon payment of a fine, on forms provided by the Superintendent of the Delaware State Police. The registering agencies with access to the Delaware Criminal Justice Information System ('DelJIS') shall promptly enter the information into the DelJIS database of registered sex offenders. Agencies without access to DelJIS will promptly send the completed registration forms to the Superintendent of the Delaware State Police for immediate entry into DelJIS. All registering agencies shall within 3 days following the registrant's release send the original copy of the registration form signed by the registrant and the agency witness to the Superintendent of the Delaware State Police. The Delaware State Police will audit the registration information. If fingerprint or photographs are determined to be missing or deficient, the Delaware State Police shall have the authority to require the registrant to provide said information at a Delaware State Police facility. And".

Section 3. Further amend § 4120(a) of Title 11 of the Delaware Code by deleting the words "within 30 days after June 27, 1994 or" therefrom.

Section 4. Further amend § 4120(a) of Title 11 of the Delaware Code by deleting the numeral "30" the second time it appears therein and substituting in lieu thereof the numeral "7".

Section 5. Further amend § 4120(a) of Title 11 of the Delaware Code by adding the following words immediately before the final period (".") therein: "who shall promptly enter the information into the DelJIS.

Section 6.". Further amend § 4120(a) of Title 11 of the Delaware Code by adding a new sentence to the end thereof as follows: "This section shall only apply to any person convicted of a crime as specified above on or after June 27, 1994."

Section 7. Further amend § 4120(a) Title 11 of the Delaware Code by adding to such subsection the following two paragraphs:

"The court in which any person described in subsection (a) of this section is sentenced shall designate at the time of sentencing whether, with respect to such person, compliance with this subchapter shall be required.

A registrant may petition the court which subjected the registrant to the provisions of this subchapter for release from registration obligations. The court may grant such a petition for release from registration only upon a showing that the registrant (i) has not committed any act which could result in a conviction of (1) any of the offenses specified in §§ 764 through 779 of Title 11 of the Delaware Code, or (2) any of the offenses specified in §§ 1108 through 1111 of Title 11 of the Delaware Code, or (3) attempt to commit any of the foregoing offenses, within 15 years following the registrant's last conviction or release from incarceration, whichever is later, (4) if the offense of which the prisoner was convicted was a misdemeanor and the court determines at sentencing or upon petition brought at any time after sentencing that the person is not likely to pose a threat to the safety of others if released from the registration obligations and/or the provisions of §4336 of this title, the court may release the person from such obligations and (ii) that the person is not likely to pose a threat to the safety of others if released from registration obligations."

Section 8. Amend § 4120(b) of Title 11 of the Delaware Code by adding the following words after the word "register" wherever it appears in said subsection: "and, upon any change of address, re-register".

Section 9. Further amend § 4120(b) of Title 11 of the Delaware Code by adding the following words immediately before the period (".") in the third sentence thereof: "and one copy to the chief law enforcement officer having jurisdiction over the inmate's intended residence".

Section 10. Further amend § 4120(b) of Title 11 of the Delaware Code by deleting the word "and" from the last sentence thereof and substituting in lieu thereof the word "the", and by adding the following words between the word "Justice" and the numerical designation "30" in the last sentence thereof: "and the chief law enforcement officer having jurisdiction over the inmate's intended residence".

Section 11. Amend § 4120(c) of Title 11 of the Delaware Code by adding the following between the word "Any" and the word "person" as they appear in said subsection: "such court designated".

Section 12. Further amend § 4120(c) of Title 11 of the Delaware Code by adding the following words after the word "released" and after the word "discharged" therein: "by a state court".

Section 13. Further amend § 4120(c) of Title 11 of the Delaware Code by adding the following words after the word "register" wherever it appears in said subsection: "and, upon any change of address, re-register".

Section 14. Further amend § 4120(c) of Title 11 of the Delaware Code by adding the following words before the final period (".") therein: "and one copy to the chief law enforcement officer having jurisdiction over the inmate's intended residence".

Section 15. Further amend § 4120(c) of Title 11 of the Delaware Code by adding the following sentence at the end of said subsection: "Any such court-designated person who hereafter is convicted in this State of the commission or attempt to commit any of the above-mentioned offenses and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge shall be registered by the Administrative Office of the court in the manner set forth in subsection (a) of this section."

Section 16. Amend § 4120(e) of Title 11 of the Delaware Code by restating said subsection in its entirety as follows:

"The registration forms shall require, without limitation, (1) a statement in writing signed by the person giving such information as may be required by the Department of Justice including but not limited to the legal name, any alias or nicknames, age, gender and race of the registrant and (2) the fingerprints if not already on file at the State Bureau of Identification and (3) a photograph of the registrant, taken at the time of initial registration and, if more than four (4) years after initial registration, at the time of any re-

registration, and (4) all known identifying factors, offense history and place of residence, and (5) a statement of the legal responsibilities of the registrant."

Section 17. Amend § 4120(f) of Title 11 of the Delaware Code by restating said subsection in its entirety as follows:

"(f) Changes of Address. If any person required to register pursuant to this section changes his or her residence address, the person shall, within seven (7) days thereof, re-register with the Superintendent of the Delaware State Police. The Superintendent of the Delaware State Police shall promptly input such information into the DelJIS and shall, within three days after receipt of such information, forward it to the Department of Justice and to the chief law enforcement officer having jurisdiction over the inmate's intended residence.

(i) Each time there is a change of address there shall be notification as set forth § 4336 of Title 11 of this Code.

(ii) Upon providing notice of a change of address, the registrant shall provide adequate verification that he or she resides at the given address.

(iii) Upon a registrant providing notice of a change of address, the Superintendent of the Delaware State Police shall, within three days thereafter, notify (A) the chief law enforcement officer having jurisdiction over the registrant's prior residence and (B) the chief law enforcement officer having jurisdiction over the registrant's intended residence."

Section 18. Amend § 4120(g) of Title 11 of the Delaware Code by deleting said subsection in its entirety and by substituting in lieu thereof the following:

"(g) Violation. Failure of any person required to register or re-register pursuant to this section to so register or re-register shall be guilty of a Class G Felony."

Section 19. Amend § 4120 of Title 11 of the Delaware Code by adding a new subsection thereto to read as follows:

"(j) Civil Liability. All elected public officials, public employees, or public agencies are immune from civil liability for any discretionary decision to release relevant information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

There shall be no civil legal remedies available as a cause of action against any public official, public employee, or public agency for failing to release information as authorized in this section."

Section 20. Amend § 2704(b) of Title 21 of the Delaware Code by deleting the words "this section" therefrom, and by substituting in lieu thereof the words "subsection (a)".

Section 21. Amend § 2704 of Title 21 of the Delaware Code by adding a new subsection thereto as follows:

"(c) The Division of Motor Vehicles shall provide notice of the obligation to register pursuant to § 4120 of Title 11 of this Code to each new resident applicant for a license to operate a motor vehicle. Every applicant for a driver's license shall sign an acknowledgment provided by the Division that he/she has received notice that registration in compliance with § 4120 of Title 11 of the Delaware Code is mandatory for any person who has been convicted in any other state of any offense which if committed or attempted in this state, would have been punishable as one or more of the offenses referenced in § 4120(a) of Title 11 of the Delaware Code, and that such registration must occur within 7 days of coming into any county, city or town in which he/she temporarily resides or is domiciled for that length of time.

All such signed acknowledgments shall be kept as permanent records by the Division in a format approved by the Director of Historical and Cultural Affairs, which may include storage on microfiche or other non-paper forms of permanent retention."

Section 22. Amend § 3102 of Title 21 of the Delaware Code by adding a new subsection thereto to read as follows:

"(c) The Division of Motor Vehicles shall provide notice of the obligation to register pursuant to § 4120 of Title 11 of this Code to each new resident applicant for an identification card. Every applicant for a state identification card shall sign an acknowledgment provided by the Division that he/she has received notice that registration in compliance with § 4120 of Title 11 of the Delaware Code is mandatory for any person who has been convicted in any other state of any offense which if committed or attempted in this state, would have been punishable as one or more of the offenses referenced in § 4120(a) of Title 11 of the Delaware Code, and that such registration must occur within 7 days of coming into any county, city or town in which he/she temporarily resides or is domiciled for that length of time.

All such acknowledgments shall be kept as permanent records by the Division in a format approved by the Director of Historical and Cultural Affairs which may include storage on microfiche or other non-paper forms of permanent retention."

Section 23. Severability of provisions

If any provision of this Act, or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not affect the provisions or application of this Act that can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

Section 23. Amend §4120(i) of Title 21 of the Delaware Code by adding the words "who may use such information as authorized by §4336 of this title" between the word "officer" and the semi-colon (":") appearing therein.

Section 24. Amend § 4120(b) of Title 11 of the Delaware Code by deleting the numeral "1" the third time it appears in the third sentence of said subsection and substituting in lieu thereof the words "the original".

Section 25. Further amend § 4120(b) of Title 11 of the Delaware Code by deleting the numeral "30" in the last sentence of said subsection and substituting in lieu thereof the words "at least 45 but no more than 90".

Section 23. Amend § 4120(i), Title 11, Delaware Code by adding the following language immediately before the final period (".") in such subsection: "provided that the employee or potential employee submits to a reasonable procedure established by standards set forth by superintendent of State Police to identify the person whose record is sought".

Section 24. Sections 21 and 22 of this Bill shall become effective six months after enactment. The remaining sections shall become effective upon enactment.

Approved June 27, 1996

## CHAPTER 398

## FORMERLY

## SENATE BILL NO. 425

AN ACT AMENDING THE BEACH PRESERVATION ACT, TITLE 7 OF THE DELAWARE  
CODE

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend §6805(d) of Title 7 of the Delaware code by adding thereto a new sentence at the end of said subsection which shall read as follows:

*"If any structure proposed to be built in whole or in part seaward of the building line could reasonably be reduced in size or otherwise altered in order to eliminate or diminish the amount of encroachment over the building line, the Department shall require such reduction or alteration as a condition of granting the permit or letter of approval."*

Section 2. This Act shall become effective immediately, and it shall apply to all applications pending before the Department of Natural Resources and Environmental Control.

Approved June 27, 1996

CHAPTER 399

FORMERLY

HOUSE BILL NO. 395  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 3, DELAWARE CODE, RELATING TO GRAIN CONTRACTS OF SALE, DISCOUNT RATES, AND TEST WEIGHT RATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 16, Title 3, Delaware Code, by designating the existing Chapter sections as "Subchapter I - Grain Testing Devices"; redesignating the Chapter as "Chapter 16. Grain Testing and Grain Contracts"; and adding a new subchapter II to read as follows:

"Subchapter II - Grain Contracts of Sale, Discount Rates, and Test Weight Rates.

§ 1611. Grain Contracts of Sale, Discount Rates and Test Weight Rates.

(a) Subject to any contractual provision to the contrary, and based upon whatever market the contracting parties agree to:

(1) The discount rates for foreign material and moisture content may not be any higher than the discount rates that prevail on the day the contract is formed.

(2) The test weight rates may not be any higher than the test weight rates that prevail on the day the contract is formed.

(b) This Section applies to any contract for the sale of grain entered into in this state provided the date of delivery is less than one year after the day the contract is formed."

Section 2. This Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any contract for the sale of grain entered into before the effective date of this Act.

Approved June 27, 1996

CHAPTER 400

FORMERLY

HOUSE BILL NO. 430

AN ACT TO AMEND CHAPTER 11, TITLE 24 OF THE DELAWARE CODE RELATING TO DENTISTRY AND DENTAL HYGIENE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1: Amend subsection (4), §1121, Subchapter II, Chapter 11, Title 24 of the Delaware Code by striking the words "or oral tissues" as the same appear in said subsection (4), and by adding in lieu thereof the words ", oral tissues, and associated structures."

Approved June 27, 1996

## CHAPTER 401

## FORMERLY

HOUSE BILL NO. 453  
AS AMENDED BY HOUSE AMENDMENT NO. 1AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO  
CONTRACTORS AND DEVELOPERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 2501, Title 30, Delaware Code by adding to said section a new subsection, to read as follows:

"(8) 'Real Estate Developer', for purposes of this chapter, means a person in the business of: (a) acquiring land (raw or improved); and (b) improving raw land or building structures (residential or commercial) on land so acquired (or both); and (c) selling land where applicable with the structure, to customers. 'Real estate development' means the activities of a real estate developer as described in this subsection. A person shall be treated as a real estate developer or as a contractor who is not a real estate developer depending, in each case, upon the business in which the person is engaged with respect to a specific parcel of real estate."

Section 2. Amend § 2501(5), Title 30, Delaware Code by striking said subsection in its entirety and inserting in lieu thereof a new subsection, to read as follows:

"(5) 'Gross Receipts' includes:

(a) In the case of a contractor other than a real estate developer, all sums received for any work done or materials supplied in connection with any real property located in the State, but does not include sums paid to subcontractors by the contractor; provided said subcontractor is licensed and subject to the provisions of this chapter with respect to these sums; and provided that a written agreement exists between the contractor and subcontractor stating the exact sums payable to said subcontractor; and

(b) In the case of a real estate developer, all sums received from the sale of real property with structures (commercial and/or residential) built thereon reduced by:

(i) The cost of the land and improvement thereto other than structures. In determining the cost of the land and improvements thereto other than structures, only the following costs may be included and allocated on a per lot basis:

(A) Cost of raw land;

(B) Site improvement costs, including but not limited to site clearing, grading, landscaping, erection/construction of open space/recreational facilities and installation of street, sanitary and storm sewers, water lines, power lines and other utilities;

(C) Engineering costs associated with rezoning (if applicable) and subdivision of the site;

(D) Legal costs/fees incurred in connection with the rezoning (if applicable) and subdivision of the site;

(E) Fees involved in obtaining final site plans and permits; or

(F) Interest and other carrying costs associated with the acquisition and development of the site, regardless of whether interest has

been expended or capitalized for federal income tax purposes (to be allocated on a per-lot basis).

(ii) Miscellaneous expenses, so as to equate the gross receipts tax treatment of a real estate developer with that of a non-developer contractor, including:

(A) The developer's share of realty transfer taxes;

(B) Real estate commissions/fees (maximum of 2% of gross proceeds);

(C) Sales concessions to buyers (i.e., points, settlement help, etc.);

(D) Other costs associated with a specific subdivision (other than general administrative and overhead); and

(E) Decorating and space planning costs associated with model homes; and

(iii) Sums paid to subcontractors, provided said subcontractor is licensed and subject to the provisions of this chapter with respect to these sums; that a written agreement exists between the contractor and subcontractor stating the exact sums payable to said subcontractor; and that the subcontractor payments are not for labor or labor and materials of the type described in subdivision (i) of this paragraph.

(c) In lieu of deducting the actual cost of land and improvements (subdivision (b)(i)) and miscellaneous expenses (subdivision (b)(ii)), the developer may, at its sole option, elect for a particular tax year to reduce sums received from the sale of real property (including the structure built by a real estate developer) by the assumed cost of land, improvements to the land, and miscellaneous expenses equal to thirty percent (30%) of the gross proceeds from the sale of the property.

(d) The election described in paragraph (c) of this subsection shall be made annually for each tax year and for each piece of real property or development in such form as the Director of Revenue shall prescribe. Notwithstanding the annual election, an election that applies to a particular piece of real estate or development shall be irrevocable as to that piece of real estate or development unless the Director, upon request, waives the election. Deductions described in paragraphs (b) and (c) of this subsection shall be made at the time of sale of the real estate and not before. Deductions for particular amounts paid may not be taken under more than one of subdivisions (i), (ii), or (iii) of paragraph (a) of this subsection."

Section 3. Amend § 2501 (1), Title 30, Delaware Code by deleting said subsection in its entirety and inserting in lieu thereof a new subsection, to read as follows:

"(1) 'Contractor' includes every person engaged in the business of:

(a) furnishing labor or both labor and materials in connection with all or any part of construction, alteration, repairing, dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains and every other type of structure as an improvement, alteration or development of real property; a person is a contractor regardless of whether he is a general contractor or a subcontractor, or whether he is a resident or a nonresident; or

(b) real estate development."

Section 4. This Act shall be effective for gross receipts received after June 30, 1993.

Section 5. It is declared to be the legislative intent that, if any section, sentence, clause or provision of this Act other than any provision of Section 4 is held to be invalid, the remainder of

the Act shall also be held invalid. If any provision of Section 4 of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision(s) or application.

Approved June 27, 1996

CHAPTER 402

FORMERLY

HOUSE BILL NO. 460

AN ACT TO AMEND CHAPTERS 13 AND 19 OF TITLE 2 OF THE DELAWARE CODE  
REPEALING THE EMPLOYEE COMMUTE OPTIONS ACT AND PROVIDING FOR  
THE CONFIDENTIALITY OF CERTAIN INFORMATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Chapter 19 of Title 2 of the Delaware Code, by repealing said chapter in its entirety.

Section 2. Amend § 1328 of Title 2 of the Delaware Code by designating the existing language as subsection (a) and by adding a new subsection (b) to read as follows:

"(b) Written or recorded information concerning employee addresses, work sites, times of travel, salary and other information of a personal nature, having been provided or to be provided by employers working with the Department to develop transportation programs or projects, shall be treated as confidential and shall not be considered as a public record under the provisions of Chapter 100 of Title 29."

Approved June 27, 1996

## CHAPTER 403

## FORMERLY

## CHAPTER 403

## FORMERLY

HOUSE BILL NO. 556  
AS AMENDED BY SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 28 OF THE DELAWARE CODE RELATING TO THE  
DELAWARE BICYCLE COUNCIL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Amend § 1701 of Title 28 of the Delaware Code by restating said section in its entirety as follows:

"§ 1701. Composition; appointment; term and meetings; compensation.

(a) The Delaware Bicycle Council shall consist of fifteen (15) members, hereafter referred to as the 'Council', to be appointed by the Governor. One (1) member (two (2) where noted) shall be appointed from each of the following agencies for a term of two (2) years: the Department of Transportation (one from the Council on Transportation and one from elsewhere within the Department), the Department of Public Instruction, the Department of Public Safety (one (1) from the State Police and one (1) from the Office of Highway Safety), the Department of Natural Resources and Environmental Control (from the Division of Parks and Recreation), the Delaware Council on Greenways & Trails, and the Department of Health and Social Services (from the Division of Public Health). In addition, seven (7) members shall be citizens knowledgeable about bicycling matters -- two (2) from New Castle County, one (1) from Kent County, one (1) from Sussex County, and three (3) at-large.

(b) The terms of the members who are private citizens shall be staggered. One of the at-large citizens and one of the New Castle County citizens, both as designated by the Governor, shall serve an initial term of one (1) year. One of the at-large citizens, one of the New Castle County citizens, both as designated by the Governor, the Sussex County citizen and the Kent County citizen shall serve an initial term of two (2) years. One of the at-large citizens, as designated by the Governor, shall serve an initial term of three (3) years. Thereafter, each citizen member shall serve a term of three (3) years. Any person who is a member at the time this legislation is enacted may serve the remainder of his or her term.

(c) The members shall each year elect one of the private citizen members to be chairperson of the Council, to serve in such capacity for a period of one year.

(d) The Council shall meet at least five (5) times each year and shall report annually to the Cabinet Committee on State Planning on its work concerning the needs and problems of bicycling in this State.

(e) There shall be no salary but each member shall be entitled to be reimbursed for his or her reasonable out-of-pocket expenses for attending any meeting of the Council.

(f) Vacancies on the Council shall be filled by the Governor by appointment for the unexpired term."

Approved June 27, 1996

## CHAPTER 404

FORMERLY

HOUSE BILL NO. 474

AN ACT TO AMEND CHAPTER 53, TITLE 24 OF THE DELAWARE CODE RELATING  
TO THE MASSAGE/BODYWORK PRACTITIONER ACTBE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend subsection (b), §5305, Chapter 53, Title 24 of the Delaware Code by striking the words "with a maximum of 1 member from the same national organization or school" as the same appear in said subsection (b).

Approved June 27, 1996

## CHAPTER 405

FORMERLY

HOUSE BILL NO. 491  
AS AMENDED BY HOUSE AMENDMENT NO. 1 AND  
SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO PUBLIC  
SWIMMING AND BATHING PLACES.BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend § 122(3)(d) of Title 16 of the Delaware Code by deleting the word "or" appearing after the word "motel" and before the word "hotel" and substituting in lieu thereof a comma ","; and by adding the phrase ", or private campground" after the word "hotel" and before the word "facility" appearing therein.

Approved June 27, 1996

## CHAPTER 406

## FORMERLY

## HOUSE BILL NO. 567

## AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO DENTISTRY AND DENTAL HYGIENE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter V, Chapter 11, Title 24 of the Delaware Code by adding a new §1194, which new Section shall read as follows:

“§1194. Appeal Panel.

a) Prior to the administration of the first practical examination each year by the Board, the Director of the Division of Professional Regulation shall appoint an appeal panel to hear appeals as a result of denial of licensure by the Board for failure of a practical examination. For appeals arising from the failure of the dental practical examination, the appeal panel shall consist of two dentists licensed to practice in this state and one public member. For appeals arising from the failure of the dental hygiene practical examination, the appeal panel shall consist of one dentist licensed to practice in this state, one dental hygienist and one public member.

b) The licensed professional members of the respective panels shall have at least three years' of experience practicing in their respective professions. A professional member shall not have served on the Board of Dental Examiners nor on the Dental Hygiene Advisory Committee for at least five years preceding his or her appointment to the panel; nor shall such professional member be an officer or other elected official in a professional association of dentists or dental hygienists. The public member shall not have been a dentist nor dental hygienist, nor a member of the immediate family of a dentist or dental hygienist, nor have been employed by a dentist, nor have a material interest in the providing of goods and services to dentists, nor have been engaged in an activity directly related to dentistry or dental hygiene.

c) Each member of the appeal panel shall serve for a term of one year, and shall be eligible for one additional reappointment to the appeal panel.

d) In the event an applicant for licensure has failed a practical examination administered by the Board of Dental Examiners, he or she has the right to appeal the decision by the Board. Such appeal shall be filed in writing with the Director of the Division of Professional Regulation within 20 days of the date of notification by the Board. Upon receipt of the applicant's written appeal of the Board's decision, the Director shall convene the appeal panel within 30 days. The Director shall notify the appellant by certified mail of the date set for the hearing.

e) The conduct of all hearings and the issuance of orders shall be in accordance with procedures established pursuant to this Section, Chapter 101, Title 29 of the Delaware Code and §8810, Title 29 of the Delaware Code. Where such provisions conflict with the provisions of this Section, this Section shall govern.

f) The applicant may appeal any denial of licensure by the panel to the Superior Court within 30 days' notice of denial. Such appeal shall be on the record.

g) In the event that an appeal is remanded from Superior Court, such appeal will be heard by the original appeal panel.”

Section 2. The provisions of Section 1 of this Act notwithstanding, the Director of Professional Regulation shall appoint the members of the first appeal panel as soon as practical after enactment of this Act.

Approved June 27, 1996

## CHAPTER 407

## FORMERLY

## SENATE BILL NO. 326

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO TRANSPORTATION OF SPIRITS, WINES OR BEER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §716(2), Chapter 7, Title 4 of the Delaware Code by deleting subsection (2) in its entirety and by substituting in lieu thereof the following "(2) Directly from the establishment of a holder of a license to sell and to deliver such alcoholic liquor to the establishment of a like holder of a license to sell."

Approved June 27, 1996

## CHAPTER 408

## FORMERLY

## SENATE BILL NO. 327

## AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO SUPPLIER AND SALES REPRESENTATIVE LICENSE FEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend §501, Chapter 5, Title 4 of the Delaware Code by deleting the first sentence of subsection (a) and by substituting in lieu thereof a new first sentence to read as follows: "Before any person sells any alcoholic liquor intended for importation into this State, such person shall procure from the Commission a supplier's license in the form to be prescribed by the Commission and shall pay therefore a biennial fee in the amount of \$50 to be permitted to sell not more than 200 cases of alcoholic liquors for importation into the State during the calendar year or a biennial fee in the amount of \$500 to be permitted to sell more than 200 cases of alcoholic liquors for importation into the State during the calendar year."

Section 2. Amend §501(b), Chapter 5, Title 4 of the Delaware Code by deleting the first sentence of subsection (b) and substituting in lieu thereof a new first sentence to read as follows: "Before any person shall do business in this State in any manner whatsoever as a sales representative of a person who sells any alcoholic liquors intended for importation into the State, such person shall first obtain from the Commission a sales representative license in the form to be prescribed by the Commission and shall pay a biennial fee therefore in the amount of \$50."

Approved June 27, 1996

## CHAPTER 409

## FORMERLY

## SENATE BILL NO. 337

## AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO THE POWERS AND DUTIES OF THE DOMESTIC VIOLENCE COORDINATING COUNCIL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 21, Title 13 of the Delaware Code by adding at the end of that Chapter a new §2105 to read as follows:

“§2105. Fatal Incident Reviews.

(a) The Council shall have the power to investigate and review, through a review panel, the facts and circumstances of all deaths that occur in Delaware as a result of domestic violence. This review shall include both homicides and suicides resulting from domestic violence. The review of deaths involving criminal investigations will be delayed for a least six months, and will under no circumstances begin until authorized by the Attorney General's office. Any case involving the death of a minor (any child under the age of 18) related to domestic violence will be reviewed jointly by the appropriate regional panel of the Child Death Review Commission and the domestic violence fatal incident review panel. The death of a minor will only be reviewed by the domestic violence fatal incident review panel where the minor's parents or guardians were involved in an abusive relationship and the minor's death is directly related to that abuse.

(b) There shall be a Fatal Incident Review Team that will be co-chaired by two members of the coordinating Council to be elected by the Council. In addition to the co-chairs, the Review Team shall consist of six other core members: the Attorney General or his or her designee, the Director of the Division of Family Services or his or her designee, the chair of the Domestic Violence Task Force or his or her designee, the Chief Judge of the Family Court or his or her designee, the Chief Magistrate of the Justice of the Peace Courts or his or her designee, and a law enforcement officer to be appointed by the Delaware Chiefs of Police Council. All members of the Review Team, plus other individuals invited to participate, shall be considered part of the review panel for a particular case or incident. The Review Team shall invite other law enforcement personnel to serve and participate as full members of a review panel in any case in which a law enforcement agency has investigated the death under review, or any prior domestic violence incident involving the decedent. The Review Team may also invite other relevant persons to serve on an ad-hoc basis and participate as full members of the review panel for a particular review. Such persons may include, but are not limited to, individuals with particular expertise that would be helpful to the review panel, or representatives from those organizations or agencies that had contact with or provided services to the individual prior to his or her death, that individual's abusive partner or family member, and/or the alleged perpetrator of the death.

(c) A review panel shall be convened by the co-chairs of the Review Team on an as-needed basis and may also be convened by any two other members of the Review Team.

(d) As part of any review, a review panel shall have the power and authority to administer oaths and to compel the attendance of witnesses whose testimony is related to the death under review and the production of records related to the death under review by filing a praecipe for a subpoena, through the Office of the Attorney General, with the Prothonotary of any County of this State. Such a subpoena will be effective throughout the State and service of such subpoena will be made by any sheriff. Failure to obey such a subpoena will be punishable according to the rules of the Superior Court.

(e) Each review panel shall prepare a report, to be maintained by the Review Team, including a description of the incident reviewed, and the findings and recommendations of the review panel.

(f) Findings and recommendations by the panel shall be adopted only upon a sixty percent (60%) vote of participating members of the review panel.

(g) The Review Team shall establish rules and procedures to govern each review prior to the first review to be conducted. The Review Team shall issue an annual report to the Domestic Violence Coordinating Council summarizing in an aggregate fashion all findings and recommendations made over the year by each review panel and describing any systemic changes that were effectuated as a result of the panels' work. The Report shall not identify the specific case or case review that led to such findings and recommendations.

(h) The review process, and any records created therein, shall be exempt from the provisions of the Freedom of Information Act in Title 29 of the Delaware Code. The records of any such review, including all original documents and documents produced in the review process with regard to the facts and circumstances of each death, shall be confidential, shall be used by the Coordinating Council only in the exercise of its proper function, and shall not be disclosed. The records and proceedings shall not be available through Court subpoena and shall not be subject to discovery. No person who participated in the review nor any member of the Domestic Violence Coordinating Council shall be required to make any statement as to what transpired during the review or information collected during the review. Statistical data and recommendations based on the reviews, however, may be released by the Coordinating Council at its discretion.

(i) Members of the Domestic Violence Coordinating Council, members of the Review Team, and members of each review panel, as well as their agents or employees, shall be immune from claims, and shall not be subject to any suits, liability, damages or any other recourse, civil or criminal, arising from any act, proceeding, decision or determination undertaken or performed or recommendation made provided such persons acted in good faith and without malice in carrying out their responsibilities; good faith is presumed until proven otherwise, with the complainant bearing the burden of proving malice or a lack of good faith. No organization, institution or person furnishing information, data, testimony, reports, or records to the review panels or the Coordinating Council as part of such an investigation shall, by reason of furnishing such information, be liable in damages or subject to any other recourse, civil or criminal."

Approved June 27, 1996

## CHAPTER 410

## FORMERLY

SENATE BILL NO. 376  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO REQUIREMENTS FOR INMATES TO PAY FOR CERTAIN MEDICAL SERVICES AND MEDICATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 6536, Title 11, Delaware Code by designating said section as subsection (a) and inserting as new subsections (b), (c) and (d) the following:

"(b) The Department shall charge a reasonable fee as defined by the Department for every inmate initiated visit with an institutional health care practitioner for examination and/or treatment. The Department shall not charge an inmate for medical visits initiated by medical/mental health staff, visits as a result of a reference to a physician from a physician's assistant or nurse practitioner, or follow-up visits initiated by a medical professional or visits resulting from a chronic medical condition. The Department shall not be responsible for the cost of medical visits to or by outside medical consultants if the visits were not ordered by institutional medical services personnel. Notwithstanding the above, an inmate shall not be refused medical treatment for financial reasons; provided, however, the Department shall debit an inmate's account for future payment to the Department in the event funds are deposited in said account and the Department shall retain records of an inmate's account upon the release of the inmate from the custody of the Department if such account has a negative balance. The outstanding balance of such an account shall be reinstated should that person be committed to the custody of the Department at some future time.

(c) The Department shall charge a reasonable fee, representing the cost to the Department, for any non-prescription drugs. The Department shall not be responsible for the cost of prescriptive drugs or medications prescribed by outside medical consultants unless approved by institutional medical services personnel. Notwithstanding the above, an inmate shall not be refused medications for financial reasons; provided, however, the Department shall debit an inmate's account for future payment to the Department in the event funds are deposited in said account and the Department shall retain account records upon the release of the inmate from the custody of the Department if such account has a negative balance. The outstanding balance of such account shall be reinstated should that person be committed to the custody of the Department in the future.

(d) Notwithstanding any provision of the Delaware Code to the contrary, there shall be established a special fund of the State to be known as the Medical Cost Recovery Fund. The Department of Correction shall, commencing upon the effective date of this Act, deposit funds assessed pursuant to subsections (b) and (c) of this section into the Medical Cost Recovery Fund. The Department may use the Medical Cost Recovery Fund to defray the costs of medical services provided to inmates."

Section 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Section 4. This Act shall be effective July 1, 1996.

Approved June 28, 1996

## CHAPTER 411

## FORMERLY

SENATE BILL NO. 377  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10, TITLE 29 AND TITLE 11 RELATING TO COURT COSTS, FILING FEES AND CREATING A MECHANISM FOR SANCTIONING FRIVOLOUS PRISONER LITIGATION

AS AMENDED BY

SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10, TITLE 29 AND TITLE 11 RELATING TO COURT COSTS, FILING FEES AND CREATING A MECHANISM FOR SANCTIONING FRIVOLOUS PRISONER LITIGATION

WHEREAS, the State recognizes and affirms the right of Delaware's prison population to seek legal redress for violations of their civil rights; and

WHEREAS, unfortunately the purpose and effectiveness of the civil rights laws have been severely compromised by the filing of unprecedented numbers of civil rights claims by prisoners that are frivolous; and

WHEREAS, in Delaware, frivolous lawsuits are being filed by prisoners at rapidly increasing rates; and

WHEREAS, our Department of Correction and the Attorney General's Office has experienced an alarming increase in the amount of staff time required to defend the State from the overwhelming numbers of frivolous prisoner lawsuits; and

WHEREAS, the State's resources spent defending the State against frivolous lawsuits could be more effectively used towards resolution of meritorious claims and towards other obligations of the State; and

WHEREAS, the time and expense of litigating frivolous lawsuits has diverted valuable and limited public resources from efforts designed to provide better facilities and rehabilitative opportunities throughout our prison system; and

WHEREAS, all law abiding citizens must carefully weigh the strengths of a potential lawsuit against the costs, as well as the consequences of filing a frivolous suit; and

WHEREAS, prisoners currently have no similar disincentives to filing non-meritorious lawsuits; and

WHEREAS, legislation is necessary to establish appropriate disincentives thereby helping to deter frivolous and malicious lawsuits while retaining the ability of prisoners to file and pursue meritorious claims.

NOW, THEREFORE;

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 10, Delaware Code by inserting as new, Chapter 88, the following:

"Chapter 88. *PROCEEDINGS IN FORMA PAUPERIS.*

§ 8801. Definitions.

When used in this Chapter:

- 1) 'Court or courts' shall mean all constitutional or statutory courts of this State.
- 2) 'Federal court' shall mean any federal court of competent jurisdiction over actions brought by prisoners as that term is defined in subsection (3) of this section.
- 3) 'Prisoner' shall mean any individual subject to the supervision of the Department of Correction, including, but not limited to, those individuals housed in correctional facilities outside of the State of Delaware.
- 4) 'Legally frivolous' shall mean a claim based on an indisputably meritless legal theory.
- 5) 'Factually frivolous' shall mean a claim where the factual allegations of which are baseless, of little or no weight, value, or importance, not worthy of serious attention, or trivial.
- 6) 'Malicious' shall mean a claim designed to vex, injure or harass, or one which is otherwise abusive of the judicial process or which realleges pending or previously litigated claims.
- 7) 'Inmate account' shall mean an account maintained by the Department of Correction in which money is held for prisoners of this State.

§ 8802. *In Forma Pauperis.*

a) Notwithstanding any Delaware law to the contrary, the courts shall promulgate rules under which an individual who is unable to pre-pay all court costs and fees may proceed *in forma pauperis*.

b) Before an individual shall be permitted to proceed *in forma pauperis* for the purposes of this chapter, the individual must submit a sworn affidavit sufficient to allow the court to determine the ability of the affiant to pay all or any portion of the court costs and fees associated with the filing of an action in that court. Such affidavit shall contain a statement that the affiant is unable to pay the costs and fees, and shall provide complete information as to the affiant's identity, the nature, source and amount of all of the affiant's income, his or her spouse's income, all real and personal property owned either individually or jointly, all cash or bank accounts held either individually or jointly, any dependents of the affiant, and all debts and monthly expenses. The affiant shall further swear or affirm that the information in the affidavit is true and correct and made under penalty of perjury.

c) Intentionally omitting or falsifying information on the affidavit shall cause the court to recalculate the filing fee due. The amount that would have been due shall be trebled and the action shall be abated until the total amount is paid in full. Nothing in this section shall limit any court's authority to take further action against the affiant in the court's discretion.

d) Nothing in this chapter shall be interpreted to preclude an individual from filing an action *in forma pauperis* if determined to be appropriate by the court.

§ 8803. Court Review.

a) In all cases in which a court has granted an individual leave to proceed *in forma pauperis*, the court shall issue an order authorizing the filing of the complaint and establishing the amount of court costs and filing fees to be paid. The court may, in its discretion, establish a schedule for the payment of the costs and fees.

b) Upon establishing the amount of fees and costs to be paid, the court shall review the complaint. Upon such review, the complaint shall be dismissed if the court finds the action is factually frivolous, malicious, or upon a court's finding that the action is legally frivolous and that even a *pro se* litigant, acting with due diligence, should have found well settled law disposing of the issue(s) raised. Any order of dismissal shall specifically identify whether the complaint was factually frivolous, legally frivolous and/or malicious. Service of process shall not issue unless and until the court grants leave following its review.

c) If a court does not dismiss a complaint pursuant to subsection (b) of this section but the record subsequently reveals the action is factually frivolous, malicious, or the action is legally frivolous and that even a *pro se* litigant, acting with due diligence, should have found well settled law disposing of issue(s) raised, the court may upon its own motion or the motion of a party, enter judgment against plaintiff and dismiss the complaint. Any such order of dismissal shall specifically identify whether the complaint was factually frivolous, legally frivolous and/or malicious.

d) If, at any time, the court dismisses an action or otherwise enters judgment against a litigant proceeding *in forma pauperis*, the jurisdiction of the court over the litigant continues until all costs and fees associated with the action are paid.

e) When a court finds that a litigant has abused the judicial process by filing frivolous or malicious litigation, the court may enjoin that litigant from filing future claims without leave of court. When so enjoined, any future requests to file claims must be accompanied by an affidavit certifying that:

- 1) the claims sought to be litigated have never been raised or disposed of before in any court; and
- 2) the facts alleged are true and correct; and
- 3) the affiant has made a diligent and good faith effort to determine what relevant case law controls the legal issues raised; and
- 4) the affiant has no reason to believe the claims are foreclosed by controlled law; and
- 5) the affiant understands that the affidavit is made under penalty of perjury.

§ 8804. Prisoners.

a) When the individual seeking permission to proceed *in forma pauperis* is a prisoner, the prisoner shall file a certified summary of his or her inmate account, together with the affidavit required pursuant to § 8802 of the Chapter. The summary shall contain all account activity for the six (6) month period immediately preceding the filing of the complaint, or for the entire time the prisoner has been incarcerated, whichever time is less.

b) If a court determines that a prisoner may proceed *in forma pauperis*, the court shall issue an order directing that the complaint be filed setting forth the total amount to be paid and establishing a schedule for payment. The schedule shall be established as follows:

- 1) The prisoner shall pay 20% of the average daily balance of the prisoner's inmate account over the previous six (6) month period or the entire time that prisoner has been incarcerated, whichever time is less.
- 2) In each successive month, until the established court costs and filing fees are paid in full, the prisoner shall pay 10% of the average daily balance of the prisoner's inmate account for the preceding month.

c) Nothing in this section shall limit the court's ability to demand a greater amount than would result from this calculation based upon the information provided in the affidavit.

d) Nothing in this section shall prohibit a prisoner from paying more than the minimum due under the court's calculation.

e) To the extent that a prisoner refuses to pay fees and costs as ordered by the court, pursuant to this section, the court may order the Department to debit the prisoner's inmate account in accordance with 29 Del.C. § 8903(13).

§ 8805. Good Time.

a) Upon a court's finding pursuant to § 8803 (b) or (c) of this chapter that a prisoner has filed a factually frivolous or malicious action, or upon a court's finding that the action is legally frivolous and that even a *pro se* litigant, acting with due diligence, should have found well settled law disposing of issue(s) raised, the court may order the Department of Correction to forfeit the portion of the litigant's behavior good time credits accumulated from the date the action was received by the court up to and including every month until the action was disposed of by the court. Upon the court's forwarding of such an order to the Department of Correction setting forth such a finding, the Department shall forfeit the prisoner's accumulated good time as ordered by the court. To the extent the Department does not have jurisdiction to forfeit accumulated good-time for a particular prisoner, the court shall forward the order to the appropriate agency who shall forfeit the prisoners accumulated good-time as ordered by the court.

b) Upon the finding of a federal court that a prisoner has filed a factually frivolous or malicious action as defined by this chapter, or upon a finding that the action is legally frivolous as defined by this chapter and that even a *pro se* litigant, acting with due diligence, should have found well settled law disposing of issue(s) raised, the federal court may order the Department of Correction to forfeit the portion of the litigant's behavior good time credits accumulated from the date the action was received by the federal court up to and including every month until the action was disposed of by the federal court. Upon the federal court's forwarding of such an order to the Department of Correction setting forth such a finding, the Department shall forfeit the prisoner's accumulated good time as ordered by the federal court. To the extent the Department does not have jurisdiction to forfeit accumulated good-time for a particular prisoner, the federal court shall forward the order to the appropriate agency who shall forfeit the prisoners accumulated good-time as ordered by the federal court."

Section 2. Amend § 8903, Title 29, Delaware Code by inserting as new subsection (13) the following:

"(13) Upon an order of the court directing the Department to debit monies in an inmate account in accordance with Chapter 88, Title 10, Delaware Code, the Department shall, to the extent adequate funds are available, transfer such monies to the court. To the extent an inmate's account does not have adequate funds to comply with the court's order, the Department shall debit the inmate's account for future payment to the court. The Department shall retain records of an inmate's account upon the release of the prisoner from the custody of the Department if such account has a negative balance pursuant to a court order under Chapter 88, Title 10. The outstanding balance of such an account shall be reinstated should that person be committed to the custody of the Department at some future time. Notwithstanding the above, no court order pursuant to Chapter 88, Title 10, Delaware Code shall have priority over charges or debits pursuant to 11 Del.C. § 6536(b) or (c)."

Section 3. Amend § 4382, Title 11, Delaware Code by inserting as new subsection (d) as follows:

"(d) Any person subject to the custody of the Department at Level IV or Level V, who is found by a court or a federal court to have filed a factually frivolous claim, malicious claim, or legally frivolous claim and sanctioned by the court or federal court pursuant to 10 Del.C. § 8805(a) or (b), shall be deemed to have failed to earn behavior good-time credits within the meaning of § 4381(b) of this Title and shall have a portion of his or her good time credits accumulated pursuant to § 4381(b) forfeited to the extent and in accordance with the order issued pursuant to 10 Del.C. § 8805."

Section 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Approved June 28, 1996

## CHAPTER 412

## FORMERLY

## SENATE BILL NO. 324

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO FALSELY REPORTING AN INCIDENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1245, Title 11, Delaware Code by inserting after the word "misdemeanor." the following:

"Notwithstanding penalties as otherwise provided, any person convicted under this section shall be required to reimburse the State, or other responding or investigating government agency, for any expenses expended in the investigation and/or response to the incident falsely reported."

Approved June 30, 1996

## CHAPTER 413

## FORMERLY

SENATE BILL NO. 338  
AS AMENDED BY SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 20 OF THE DELAWARE CODE BY CREATING A NEW CHAPTER 34 ESTABLISHING THE EMERGENCY MANAGEMENT ASSISTANCE COMPACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fourths of all members elected to each house thereof concurring therein):

Section 1. Amend Title 20, Delaware Code, by inserting as new Chapter 34 the following:

“CHAPTER 34. EMERGENCY MANAGEMENT ASSISTANCE COMPACT.

§3401. Ratification and text.

The General Assembly of this State ratifies the following compact made and entered into by and between participating member states legally joining therein in the form substantially as follows:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I -- PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enacted this compact (hereinafter the “Party States”). For the purposes of this agreement, the term “states” is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the Party States entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of giving and receiving of aid by Party States or subdivisions of Party States during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states’ National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II -- GENERAL IMPLEMENTATION

Each Party State entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each Party State further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the Party States, including any resources on hand or available from the Federal Government or any other source, that are

essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a Party State, shall be the underlying principle on which all articles of this compact shall be understood. On behalf of the governor of each Party State participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

### ARTICLE III -- PARTY STATE RESPONSIBILITIES

(a) It shall be the responsibility of each Party State to formulate procedural plans and programs for interstate cooperation in the performance of responsibilities listed in this article. In formulating such plans, and in carrying them out, the Party State, insofar as practical shall:

(i) Review individual state hazard analyses and, to the extent reasonably possible, determine all those potential emergencies the Party State might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack.

(ii) Review Party States' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

(iii) Develop interstate procedures to fill identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(iv) Assist in warning communities adjacent to or crossing the state boundaries.

(v) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services and resources, both human and material.

(vi) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(vii) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(b) The authorized representative of a Party State may request assistance of another Party State by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

(i) A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

(ii) The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

(iii) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the Party States with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to the emergency capabilities.

### ARTICLE IV -- LIMITATIONS

Any Party State requested to render mutual aid or conduct exercises in training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protections for such state.

Each Party State shall afford to the emergency forces of any Party State, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the Party State that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

#### ARTICLE V -- LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any Party State evidencing the meeting of qualifications of professional, mechanical, or other skill, and when such assistance is requested by the receiving Party State, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

#### ARTICLE VI -- LIABILITY

Officers or employees of a Party State rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no Party State or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

#### ARTICLE VII -- SUPPLEMENTARY AGREEMENTS

In as much as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states.

Supplementary agreements may comprehend, but shall not be limited to, provision for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

#### ARTICLE VIII -- COMPENSATION

Each Party State shall provide for the payment of compensation and death benefits to injured members of the emergency forces of the state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

#### ARTICLE IX -- REIMBURSEMENT

Any Party State rendering aid in another state pursuant to this compact shall be reimbursed by the Party State receiving such aid for any loss or damage or expense incurred in the operation of any equipment and the provisions of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding Party State may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving Party State without charge or cost; and provided further, that any two or more Party States may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

#### ARTICLE X -- EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the Party State and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuation might occur. Such plans shall be put into effect by request of the state from which evacuees might come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the proving of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the Party State receiving evacuees and the Party State from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the Party State from which the evacuees come. After the termination of the emergency or disaster, the Party State from which the evacuees come shall assume the responsibility for the ultimate support or repatriation or such evacuees.

#### ARTICLE XI -- IMPLEMENTATION

A. This compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any Party State may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal of the governors of all other Party States. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the Party States and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

#### ARTICLE XII -- VALIDITY

This Act shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

#### ARTICLE XIII -- ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

§3402. Construction of Chapter.

Nothing contained in this chapter shall be construed as a limitation of powers granted in any other law to enter into interstate compacts or other agreements relating to civil defense in an emergency or impairing in any respect the force and effect thereof.

§3403. Future compacts, governing law.

To the extent that a prospective Party State has adopted an Emergency Management Assistance Compact in conformity with the language of this Chapter, Chapter 34, Title 20, Delaware Code, the provisions of this Chapter shall supersede and override the provisions of Chapter 33, Title 20, Delaware Code."

Approved June 30, 1996

CHAPTER 414

FORMERLY

HOUSE SUBSTITUTE NO. 1

FOR

HOUSE BILL 159

AS AMENDED BY HOUSE AMENDMENT NO. 1 AND  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 43, TITLE 21, DELAWARE CODE, RELATING TO  
EQUIPMENT AND CONSTRUCTION OF VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Chapter 43, §4348, Title 21, Delaware Code, by adding thereto a new (d)(3) to read as follows:

"(d)(3) When installed by the vehicle manufacturer, flashing lights may be installed upon any motor vehicle being used by a fire chief, assistant fire chief, fire engineer, fire police officer, police officer, or a firefighter who is a member of any regularly established fire company or by an ambulance attendant who is a member of any regularly established ambulance service. The lights shall be used only in response to duty as a first responder. Only those firefighters or ambulance attendants of regularly established fire companies duly designated as first responders by their respective fire chief or those ambulance attendants of other regularly established ambulance services duly designated as first responders by their respective ambulance captain shall be authorized to use such flashing lights, notwithstanding the provisions of §4353(c) of this Chapter. Nothing in the provisions of this Section shall be interpreted to grant emergency vehicle status to firefighters or ambulance attendants making use of such signals in their personal vehicles pursuant to the provisions of §4106 of Title 21, Delaware Code. Flashing lights as used in this subsection shall mean a sudden and transient outburst of bright light either operated or activated by fourway flashers and/or by a high and low beam headlight switch on the vehicle.

Approved June 30, 1996

## CHAPTER 415

## FORMERLY

HOUSE BILL NO. 339  
AS AMENDED BY HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO EXPERT WITNESSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 6854 of Title 18 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof the following:

"§6854. Expert Witness.

No person shall be competent to give expert medical testimony as to applicable standards of skill and care unless such person is familiar with the degree of skill ordinarily employed in the field of medicine on which he or she will testify."

Approved June 30, 1996

## CHAPTER 416

## FORMERLY

## HOUSE BILL NO. 473

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO DEPARTMENT OF MOTOR VEHICLE RECORDS AND DRIVING DURING SUSPENSION OFFENDERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2736, Title 21 of the Delaware Code by striking the catchline of said section in its entirety and substituting in lieu thereof, a new catchline, to read:

§ 2736. Notice; Evidence of motor vehicle records."

Section 2. Amend § 2736(b), Title 21 of the Delaware Code by striking the third sentence thereof in its entirety.

Section 3. Amend § 2736, Title 21 of the Delaware Code by adding thereto new subsections, to read:

"(c) In any prosecution under this Chapter, proof of the giving of notice of suspension or revocation in a manner provided for by subsection (b) of this section may be made by:

(1) the certificate of any officer or employee of the Department; or

(2) an affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof; or,

(3) a computer generated list of those persons whose suspension and/or revocation notices have been electronically processed through a computer interface system of the Department and a Court, such list having been generated electronically at the same time the notice is processed by the computer system.

(d) In the event that one of the means of proof of the giving of notice enumerated in subsection (c) of this section is utilized, then it shall be unnecessary for any employee or agent of the department to appear personally in Court.

(e) In any prosecution under this Code, a conviction record as maintained in the Division of Motor Vehicles, which has been certified by the Director of the Division of Motor Vehicles, may be admitted into evidence and shall be competent evidence that the person named therein was duly convicted of each offense enumerated therein and of the status of that persons' driving license and/or privileges. It shall be unnecessary for any employee or agent of the Department to personally appear for the admission into evidence of such conviction record in any proceeding under this Code."

Approved June 30, 1996

## CHAPTER 417

## FORMERLY

## HOUSE BILL NO. 508

AN ACT TO AMEND SUBCHAPTER II, CHAPTER 21, TITLE 21 OF THE DELAWARE CODE RELATING TO SPECIAL REGISTRATION PLATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2140(g)(5), Title 21 of the Delaware Code by striking the period "." immediately following the word "organization" and inserting the following: ", except for the Telephone Pioneers of America who must have a minimum of 75 applications for special plates before the Director of Motor Vehicles will approve the issuance of a special plate for the organization."

Approved June 30, 1996

## CHAPTER 418

## FORMERLY

HOUSE BILL NO. 518  
AS AMENDED BY SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO CERTAIN  
MOTOR VEHICLE OFFENSES COMMITTED BY JUVENILES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 927(a) of Title 10 of the Delaware Code by striking paragraphs (1) through (20) of said subsection in their entirety, and by inserting in lieu thereof the following:

- (1) Displaying or possessing fictitious registration cards, number plates or registration plates under § 2115(2);
- (2) Operating a motor vehicle without motor vehicle insurance under § 2118;
- (3) Possessing a fictitious insurance identification card under § 2118A(a);
- (4) Altering or forging a certificate of title, a manufacturer's certificate of origin, a registration card, a vehicle warranty or certification sticker or a vehicle identification plate under § 2316;
- (5) Fraud in obtaining a driver's license, or display of a fraudulently altered license under § 2751;
- (6) Driving while license is suspended or revoked under § 2756;
- (7) Driving during a period of ineligibility under § 2758;
- (8) Penalties under § 2971(a);
- (9) Obedience to police officers under § 4103;
- (10) Walking on a highway under the influence under § 4149;
- (11) Speed exhibitions and drag racing under § 4172;
- (12) Malicious mischief by motor vehicle under § 4172A;
- (13) Reckless driving under § 4175;
- (14) Operation of vehicle while under the influence of intoxicating liquor or drug under § 4177;
- (15) Duty of driver involved in accident resulting in injury or death to any person under § 4202;
- (16) Duty to report accidents under § 4203;
- (17) Introduction, sale, distribution, or advertisement for sale to public of motor vehicle master keys under § 4601;
- (18) Reporting of keys under § 4603;
- (19) Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock-picking devices, and hot wires under § 4604;

- (20) Injuring vehicle without consent of owner under § 6701;
- (21) Driving vehicle without consent of owner under § 6702;
- (22) Tampering with vehicle under § 6703;
- (23) Receiving or transferring stolen vehicle under § 6704;
- (24) Removed, falsified or unauthorized identification number on vehicle or engine; removed or affixed license/registration plate with intent to misrepresent identity under § 6705;
- (25) Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card under § 6708;
- (26) Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers under § 6709; and
- (27) Unlawful possession of assigned titles, assigned registration cards, vehicle identification, and warranty stickers under § 6710."

Approved June 30, 1996

## CHAPTER 419

## FORMERLY

HOUSE BILL NO. 519  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO HOME CONSTRUCTION AND HOME IMPROVEMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 36, Title 6 of the Delaware Code by striking the chapter heading which reads "New Home Buyers Protection Act" and by inserting in lieu thereof a new chapter heading to read:

"Chapter 36. Home Construction and Improvement Protection."

Section 2. Amend Chapter 36, Title 6 of the Delaware Code by designating the contents thereof as "Subchapter I. New Home Buyers Protection Act."

Section 3. Amend Subchapter I, Chapter 36, Title 6 of the Delaware Code by striking the word "chapter" each time it appears therein and by inserting in lieu thereof in each instance the word "subchapter".

Section 4. Amend Chapter 36, Title 6 of the Delaware Code by inserting a new subchapter to read:

"Subchapter II. Home Owner's Protection Act.

§ 3651. Definitions.

As used in this subchapter:

(1) 'Improvement' includes buildings, roads, streets, entrances and walkways of any type constructed thereon, and other structures affixed to and on land, as well as any changes to the land itself.

(2) 'Construction' includes construction, erection, building, alteration, repair, reconstruction and destruction of improvements to real property.

(3) 'Residential Real Property' means any estate in real property improved by a dwelling for use as a residence.

§ 3602. Economic loss relating to improvements to residential real property.

No action based in tort to recover damages resulting from negligence in the construction or manner of construction of an improvement to residential real property and/or in the designing, planning, supervision and/or observation of any such construction or manner of construction shall be barred solely on the ground that the only losses suffered are economic in nature."

Approved June 30, 1996

## CHAPTER 420

## FORMERLY

HOUSE BILL NO. 568  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 2AN ACT TO AMEND CHAPTER 35, TITLE 6 OF THE DELAWARE CODE RELATING TO  
BUILDING CONSTRUCTION PAYMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. This Act may be cited as the "Construction Prompt Payment Act".

Section 2. Amend Chapter 35, Title 6 of the Delaware Code by adding thereto a new §  
3506 to read as follows:

"§ 3506. Interest penalties on late payments.

(a) Each construction contract awarded by a contractor shall include:

(1) a payment clause which obligates the contractor to pay the subcontractor for satisfactory performance under the subcontract within thirty (30) days out of such amounts as are paid to the contractor; and

(2) an interest penalty clause which obligates the contractor to pay the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the contract pursuant to paragraph (1) of this subsection.

(b) The interest penalty shall apply to the period beginning on the day after the required date and ending on the date on which payment of that amount due is made and shall be computed at the legal rate in effect at the time the obligation to pay a late payment interest penalty accrues. Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on such amount.

(c) The clauses required by subsection (a) of this section shall not be construed to impair the right of the contractor to include in its subcontracts provisions which permit the contractor to retain a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to incur an interest penalty, in accordance with the terms and conditions agreed to by the parties to the contract. In such a case, the contractor must provide written notice to the subcontractor as to why payment is being withheld within seven (7) days of the date required for payment to the subcontractor.

(d) If it is determined by a court of competent jurisdiction that a payment withheld pursuant to subsection (c) was not withheld in good faith for reasonable cause, the court may award reasonable attorney's fees to the prevailing party. In any civil action brought pursuant to this section, if a court determines after a hearing for such purpose that the cause was initiated, or a defense was asserted, or a motion was filed, or any proceeding therein was done frivolously or in bad faith, the court shall require the party who initiated such cause, asserted such defense, filed such motion, or caused such proceeding to be had to pay the other party named in such action the amount of the costs attributable thereto and reasonable expenses incurred by such party, including reasonable attorney's fees."

(e) Once a contractor has made payment to the subcontractor according to the payment terms of the construction contract or the provisions of this section, future claims for payment against the contractor, or any surety of the contractor by parties owed payment from the subcontractor shall be barred."

Section 3. Amend § 3501(1), Title 6 of the Delaware Code, by deleting the word 'for' appearing after the phrase 'with another person' and before the phrase 'the erection, construction, completion, alteration or repair' and substituting in lieu thereof the phrase 'to furnish labor and/or materials in connection with'.

Section 4. This Act shall apply to all contracts entered into on or after the date of enactment.

Approved June 30, 1996

## CHAPTER 421

## FORMERLY

HOUSE BILL NO. 579  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND SECTION 1405, TITLE 11 OF THE DELAWARE CODE, RELATING TO THE EXCEPTIONS TO THE OFFENSE OF POSSESSING A GAMBLING DEVICE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1405(c), Title 11 of Delaware Code, by striking paragraph (2) thereof in its entirety and by substituting in lieu thereof a new paragraph to read:

“(2) Any slot machine or gambling device which is manufactured (including without limitation the retrofitting or alteration of a finished machine or device), assembled, transported, kept, exhibited, managed, placed, or possessed by a person within this State or which is the subject of any negotiation which involves a transaction affecting or designed to affect the ownership, custody, or use of such machine or device by such person in this State where:

(A) Such person is duly licensed to conduct a manufacturing or other business in this State; and

(B) Such person is registered in accordance with the federal Gambling Devices Act of 1972 as amended (15 U.S.C. 1171 *et seq.*) and is in the business of designing, assembling, manufacturing, selling, supplying, repairing, or retrofitting slot machines, gambling devices, or component parts thereof exclusively for lawful possession and use.”

Section 2. Amend Section 1405, Title 11 of Delaware Code, by adding thereto a new subsection (e), which subsection shall read:

“(e) For purposes of this Section, a “video lottery machine” as defined in § 4803(g) of Title 29, Delaware Code, which is owned or leased by the State for use in the Delaware video lottery shall not constitute either a slot machine or a gaming device.”

Approved June 30, 1996

CHAPTER 422

FORMERLY

HOUSE BILL NO. 593

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO THE DELAWARE FRAUD PREVENTION BUREAU OF THE OFFICE OF THE INSURANCE COMMISSIONER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2405 of Title 18, Delaware Code, by deleting subsection (a) thereof in its entirety and substituting the following:

“(a) The Commissioner or his/her designee, in addition to other provisions of this title, shall have the power and authority to administer oaths, subpoena witnesses, and to compel the production of non-privileged evidence, in any form, that is relevant or will lead to the discovery of relevant information regarding fraud investigation. Any natural or other person, as well as any State or governmental entities may be subpoenaed and shall produce the required evidence or to make such evidence available for inspection by the Bureau in a timely manner. The Superior Court of the State of Delaware shall have exclusive jurisdiction regarding the enforcement or lawfulness of a subpoena on proper application by a party in interest.”

Section 2. Amend §2405 of Title 18, Delaware Code, by adding thereto a new sub-section to read as follows:

“(c) Subpoenas may be served in any manner that is authorized for service of original process or subpoenas under the Superior Court Rules of Civil Procedure.”

Approved June 30, 1996

## CHAPTER 423

## FORMERLY

## HOUSE BILL NO. 598

## AN ACT TO REINCORPORATE THE TOWN OF TOWNSEND.

WHEREAS, it is deemed desirable that the Charter of the Town of Townsend, being Chapter 174, Volume 23, Laws of Delaware, as amended, entitled "An Act to Re-incorporate the Town of Townsend", together with the various amendments and supplements thereto, be amended and revised in certain respects and consolidated into one complete Act.

## NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

## "ARTICLE I

## INCORPORATION

## Section 101. Incorporation

The inhabitants of the Town of Townsend, within the corporate limits as hereinafter defined in this Charter or as extended as hereinafter provided, are hereby constituted and declared to be a body politic incorporated in law and equity, by the corporate name of "The Town of Townsend", and by that name shall have perpetual succession, and shall have all of the powers incident to or may attach to a municipal corporation as they, through their duly elected officers and agents, may deem proper, not in conflict with the provisions of this Charter of government, nor with the Constitution and Laws of the State of Delaware, nor of the United States; and as such shall be able and capable to sue and be sued, plead and be implicated, answer and be answered, defend and be defended, in all courts.

## Section 102. Boundaries

The boundaries of the Town of Townsend shall continue heretofore existing under the Charter of "The Town of Townsend" immediately prior to the enactment of this Charter.

The Commission of the Town of Townsend may at any time hereafter cause a survey and plot to be made of said Town and the said plot, when made and approved by the Commission, shall be recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware, and the same or the record thereof, or a duly certified copy of the said record shall be in evidence in all courts of law in equity in this state.

## Section 103. Annexation of Territory

The Town shall have the power to annex any additional territory contiguous to its present limits and lands, and extend and apply to such annexed territory all laws, ordinances and resolutions in force within the Town, so far as they may be applicable.

Additional territory contiguous to the Town may be annexed in the following manner:

a. Upon presentation of a resolution adopted by a majority of the Town Commission, the Town shall conduct a special election in accordance with a procedure set forth in 22 Del. C. Section 101, except that there shall be no weighted voting and, instead, each qualified voter and each real estate owner will be entitled to one vote each.

b. The Town is hereby authorized to adopt by ordinance such further policies and procedures as it deems necessary in order to effectuate the authority given herein.

## ARTICLE II

## POWERS OF THE TOWN

### Section 201. Powers of the Town

201.1 General The Town shall have all the powers possible for a town to have under the Constitution and Laws of the State of Delaware as fully and completely as though they were specifically enumerated in this Charter. The Town shall have the powers to make, adopt, and establish all such ordinances, resolutions, regulations, rules and by-laws not contrary to the laws of the State of Delaware and the United States as the Town Commission may deem necessary to carry into effect any of the provisions of this Charter or any other law of the State relating generally to municipal corporations or which they may deem proper and necessary for the good government of the Town, the protection and preservation of persons and property, and of the public health and welfare of the Town and its inhabitants. The Town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise with any one or more states or civil divisions or agencies thereof, including the government of New Castle County, the State of Delaware, or the United States or any agency thereof.

201.2 Enumeration of Powers Not by way of limitation upon the scope of the powers vested in the Town Commission to exercise all powers delegated by this Charter to the Town (except as may expressly appear herein to the contrary), but rather by way of enumeration and for purposes of clarity, the Town Commission is vested by this Charter with the following powers, that is to say, the Town Commission:

201.2.1 may have and use a corporate seal which may be altered, changed, or renewed at any time.

201.2.2 may hold and acquire by gift, negotiation and purchase, devise, lease, or condemnation property both real (improved or unimproved) and personal, or mixed, within or without the boundaries of the Town, in fee simple or lesser estate or interest, necessary or desirable for any municipal or public purpose, including but not limited to providing sites for constructing, improving, extending, altering or demolishing:

- a. public buildings;
- b. parks;
- c. streets, squares, lanes, alleys, and,
- d. sewer systems, including but not limited to sewage lines, conduits, sewage disposal or treatment plants, and all appurtenances thereto;
- e. water systems, including but not limited to water plants, wells, lines, conduits and all appurtenances thereto;
- f. recreational facilities, including but not limited to gymnasiums, athletic fields, bicycle paths, tennis, basketball, or paddle courts and all appurtenances thereto;
- g. adequate municipal services for persons and other legal entities residing within or beyond the corporate limits of the Town, their mutual benefit and advantage, upon such terms, charges, and conditions as the Town Commission may determine and approve;
- h. slum clearance and redevelopment, urban renewal, revitalization or rehabilitation of blighted areas or removal of dangerous buildings;
- i. protection services for the citizens of the Town to include, but not limited to, police, fire, rescue and paramedic support.

201.2.3 may sell, grant, alienate, lease, mortgage, manage, hold and control such property as the interests of the Town may acquire except as prohibited by the Constitution or Laws of the State of Delaware or as restricted by this Charter;

201.2.4 may pay for the acquisition, construction, improvement, repair, extension, alteration or demolition of any Town property (real, personal or mixed) from the general fund of the Town, from the proceeds of any bond issue which may be authorized and sold for any of the purposes for which lands and premises are authorized by this Charter to be acquired, and/or from the proceeds of any grant or loan made to the Town by any governmental entity of the United States and/or the State of Delaware and/or New Castle County where the proceeds of the grant or loan are for the purposes for which lands and premises are authorized by this Charter to be acquired;

201.2.5 may acquire, build erect, and maintain buildings and facilities necessary or required for housing and equipping the offices of the Town;

201.2.6 may purchase, take and hold real and personal property when sold for any delinquent tax, assessment, water rent, electric bill, gas bill, license fee, tapping fee, charge growing out of abatement of nuisances, or other charge due the Town and sell the same;

201.2.7 may;

a. ascertain, locate, lay out, establish, open, change, alter, widen, abandon, regulate the use and enjoyment of, prevent or remove any obstruction of, level, grade, flag, dress, macadamize, pave, improve, dredge, erect, remove, repair and replace any new or present street, highway, road, alley, waterway, park, crosswalk, wharf, dock, sewer, drain, gutter, aqueduct or pipeline or portion thereof, or any new or present curb, or gutter or portion thereof, or any new or present curb, or gutter or portion thereof in the Town and the strand in or contiguous to the Town;

b. specify the grade thereof, the materials to be used in the doing thereof and the manner in which the same shall be done;

c. enter into contracts or agreements with the State of Delaware for the permanent maintenance, repair and upkeep of any street, highway, road, alley, sidewalk or other public thoroughfare within the Town;

201.2.8 may provide, construct, extend, maintain, manage and control bulkheads, embankments, rip rap, piers or fills for the preservation of any waterway, strand or high land within the corporate limits of the Town and contiguous thereto to the end that the same may be preserved and properly protected that the general public might enjoy the use thereof;

201.2.9 may regulate and control the planting, growing, treatment and preserving of ornamental shade trees in the streets, avenues, highways, parks and lands of the town and may authorize or prohibit the removal or destruction of said trees;

201.2.10 may fully control the drainage of all surface water within the Town, and to that end, may provide, construct, extend, maintain, manage and control a surface water drainage system for the health, sanitation, and convenience of the inhabitants of the Town;

201.2.11 may provide an adequate supply of potable water for the Town and its inhabitants and, to this end, may:

a. acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of wells, reservoirs, pumps, machines, water treatment facilities, stations, tanks, standpipes, water mains, fire hydrants and all other equipment, property, or rights used in or about the collection, storage, purification, conveyance or distribution or sale of water;

b. regulate and prescribe for what public or private purposes the water furnished by the Town may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or

penalties, or both, for any willful or negligent injury, or damage to or interference with the water system or the equipment of the Town;

c. Furnish or refuse water from the Town system to places and properties outside the Town corporate limits; and

d. contract for and purchase water and distribute the same to users within or without the Town with the same full powers as though such water had been initially reduced to usefulness by the Town itself;

201.2.12 may:

a. provide, construct, extend, maintain, manage and control: a sewer system and/or a sewage treatment and disposal plant and facilities for the health, sanitation and convenience of the inhabitants of the Town;

b. regulate and prescribe for what private or public uses or purposes the system may be used, the manner of its use, the amounts shall be collected and the fines or penalties or both, for any willful or negligent injury or damage to, or interference with the said system, plant or facilities;

c. furnish or refuse to furnish sewer disposal service from the Town system to places and properties outside the Town limits;

d. compel any and all properties in the Town to be connected to the sewer system of the Town; and

201.2.13 may provide for and control the lighting of the streets, highways, roads, alley, waterways, parks, strands, crosswalks, wharfs, docks, public buildings or other public places in the Town;

201.2.14 may regulate, control or prevent the use or storage of all combustible or dangerous materials and the use of candles, lamps and other lights in stores, shops, and other places; and may regulate, suppress, remove or secure any fireplace, stove chimney, over broiler or other apparatus which may pose a danger of causing fires;

201.2.15 may;

a. provide for the organization of a fire department and the control and government thereof;

b. establish fire limits and do all things necessary for the prevention or extinguishment of fires; and

c. contribute or donate funds to any volunteer fire company or companies incorporated under the Laws of the State of Delaware, or any volunteer fire association or associations maintaining and operating fire fighting equipment and service to the Town, provided that any such contribution or donation may be made subject to such conditions as to the use thereof as the Town Commission may deem advisable;

201.2.16 may provide for the organization of ambulance, rescue or paramedic services and the control and government thereof, may establish territories within the Town for such services; and may, at the discretion of the Town Commission, contribute or donate funds to any such service formed or incorporated under the Laws of the State of Delaware, or to any volunteer service maintaining and operating ambulance, rescue or paramedic equipment and services for the inhabitants of the Town, provided that any such contribution or donation may be made subject to such conditions to the use thereof as the Town Commission may deem advisable;

201.2.17 may prohibit drunkenness, use or distribution of controlled substance, gaming and fraudulent devices and riots, disturbances and disorderly assemblies;

201.2.18 may adopt and enforce such ordinances regulating traffic on all streets, highways, roads, alleys and public ways within the Town as are consistent with the motor vehicle laws of the State of Delaware;

201.2.19 may regulate or prohibit the use of streets, highways, roads, alleys, parks, rights-of-way, other public places and Town-owned lands for commercial use, or activities not otherwise protected from such regulation or prohibition by the Constitution or Laws of either the United States or the State of Delaware;

201.2.20 may regulate or prohibit the use of guns, air guns, spring guns, pistols, sling shots, bean shooters, and any other device for discharging missiles which may cause bodily injury or injuries or harm to persons or property; and may regulate the use of bonfires, fireworks, bombs and detonating works of all kinds within the Town;

201.2.21 may provide for and preserve the health, peace, safety, cleanliness, beauty, good order and public welfare of the Town;

201.2.22 may prohibit, restrain, license or regulate all public sports, exhibitions, shows, parades, productions, circuses or other public performances, amusements and games;

201.2.23 may direct the excavation, draining, filling, cleaning, curbing or fencing of privately owned lots, tracts, pieces or parcels of land in the Town which are deemed dangerous or unwholesome, or necessary to carry out any improvements authorized by this Charter and may assess the cost thereof against the owner thereof;

201.2.24 may define, prevent, abate or remove nuisances, obstructions or any other conditions detrimental to the public safety, health or welfare; and may cause the cost of such abatement or removal to be paid by the person or other legal entity causing or permitting same to exist;

201.2.25 may adopt ordinances providing for condemnation of any building or structure in the Town which is determined, on the basis of standards set forth in such ordinances to be a fire hazard or otherwise unsafe, and may cause the same to be torn down or removed;

201.2.26 may adopt ordinances to establish and regulate animal pounds and restrain, prohibit and impound any domestic or wild animal, beast, bird or fowl running at large within the corporate limits of the Town; authorized the destruction of the same; and may regulate the keeping of dogs within the Town, and provide for registration and fees thereof;

201.2.27 may provide for the punishment of a violation of any ordinance of the Town by appropriate fine, penalty, or forfeiture;

201.2.28 may regulate and control the construction, alteration, or removal of dwellings or other structures and provide for granting permits for same;

201.2.29 may regulate and control construction activities by private individuals or companies at such times and seasons of the year and at such hour of the day as the Town Commission may determine necessary and appropriate for the public health, welfare and convenience;

201.2.30 may provide for and regulate the naming of the streets and the numbering of houses and commercial establishments within the Town corporate limits;

201.2.31 may:

a. establish setback line for buildings and other structures to be erected;

b. zone or district the Town and make provision for particular zones or districts with regard to construction or building materials;

c. prohibit any construction except that for which a building permit has been issued as prescribed by the Town Commission; and

d. exercise all powers and authorities pursuant to 22 Del. C., Chapter 3, or any future corresponding provisions of law;

201.2.32 may regulate the conduct of any business, profession or occupation within the corporate limits of the Town;

201.2.33 may license, tax, and collect fees annually for any and all municipal purposes of such various amounts as the Town Commission, from time to time, shall fix from any individual, firm, association or corporation carrying on, or practicing any business, profession or occupation within the limits of the Town;

201.2.34 may grant licenses, issue permits, and regulate any activity within the corporate limits of the Town, whether previously dedicated to or owned by the State of Delaware;

201.2.35 may impose upon new development or construction or upon first-time occupancy of new construction such "impact fees" as are reasonably calculated to recover the cost of installing, enlarging, improving or expanding public or municipal improvements which have a rational nexus to such new construction;

201.2.36 may appropriate money to pay the debts and liabilities of the Town, or any portion thereof, from any funds available therefor; an may, in case of emergency, temporarily transfer money from one fiscal account to another fiscal account of the Town;

201.2.37 may raise revenue for the Town by the levying and collecting of taxes on real property, taxes on the transfer or sale of real property, taxes on business activities, special assessments, licensing fees and other charges for services;

201.2.38 may investigate the conduct of any officer, employee or representative of the Town, in the conduct of official duties, and for such purpose may compel the attendance of witnesses and the production of books, records, or other evidence by subpoena, and may administer oaths or affirmations;

201.2.39 may establish a pension plan or a health and welfare plan or both, for the employees of the Town under such terms and conditions as the Town Commission may deem appropriate, with the funding accomplished through an insurance company licensed by and authorized to do business in the State of Delaware, approved by the Town Commission.

### ARTICLE III

#### COMPOSITION OF GOVERNMENT

##### Section 301. Composition of Government

The government of the Town and the exercise of all powers conferred by this Charter, except as otherwise provided therein, shall be vested in and exercised by a five (5) member Town Commission composed of a President and four (4) other members, each of whom shall be elected by popular vote as hereinafter provided. Each Town Commissioner shall serve a term which shall be for a period of two (2) years.

### ARTICLE IV

#### POWERS OF THE COMMISSION

##### Section 401. Ordinances

The Town Commissioners are hereby vested with the authority to enact, adopt, amend and repeal ordinances and adopt resolutions relating to any subject within the powers or functions of a town, or relating to the government of a town, its peace and order, its sanitation,

beauty, health, safety, convenience and comfort of its population, and the protection and preservation of property, and to fix, impose, and enforce payment of fines and penalties for the violation of such ordinances or resolution, and no provision of this Section as to ordinances or resolutions on any particular subject shall be held to be restrictive whether specifically enumerated or not.

The Town Commissioners shall not have the power to exempt any individual from the application of any ordinance, regulation, resolution, or rule of the Town, except as set out in this Charter or as provided by the United States Constitution or the laws of the State of Delaware.

Every ordinance shall be introduced in writing. No ordinance, except emergency ordinances, shall be passed at the meeting at which it is introduced. Upon introduction of an ordinance, a fair summary of said ordinance shall be published at least once in a newspaper or newspapers having general circulation in the municipality. Voting on any ordinance shall be by voice vote and the vote of each Town Commissioner on any ordinance shall be entered on the record. No ordinance shall be enacted, adopted, amended or repealed unless it shall have the affirmative vote of a majority of the entire Town Commission - 3 Affirmative votes of the Town Commissioners.

#### Section 402. File of Ordinances

It shall be the duty of the Town Commissioners at a reasonable time or times, to compile the ordinances, codes, orders and rules of the Town Commissioners. The Town Commissioners shall have a reasonable number of copies printed for the use of the officials of the Town and for public information. From time to time, upon the enactment of new ordinances, codes, rules and regulations, or upon the enactment of amendments to the same, the Clerk of the Town Commissioners shall enroll the same in the journal of the Town Commissioners and shall keep copies of the same in a book to be provided for that purpose so that the same may be readily examined.

#### Section 403. Emergency Ordinances

To meet a public emergency affecting life, health, property or the public peace, the Town Commission may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its service, or authorize the borrowing of money except as provided in Section 705 of this Charter. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it was introduced, but the majority vote of all Town Commission members shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance shall automatically stand repealed as of the 120th day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this Section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this Section for the adoption of emergency ordinances.

#### Section 404. Power of the President

The President of the Town Commission shall enjoy the all powers afforded to Town Commissioners by virtue of this Charter, including the ability to vote on all motions, ordinances and other issues before the council. In addition, the Town President shall have the authority to sign Town contracts after approval of the town council, which will be attested to by the Town Clerk or a designated delegate of the Town Clerk.

#### Section 405. Police Force

The Town Commissioners may appoint a police force consisting of such person or persons as the Town Commissioners may deem wise and advisable. The Town Commissioners

shall from time to time adopt rules and regulations as may be necessary for the organization, government and control of the police force. The members of the force shall be subject to the direction of the Town Commissioners and may be removed by the Town Commissioners at any time. They shall preserve peace and order and shall compel obedience within the town limits to the ordinances of the town and the laws of the State; and they shall have such other duties as the Town Commissioners shall from time to time prescribe. Each member of the police force shall be vested with all powers and authority of a constable of New Castle County within the Town limits and within one mile outside such limits, and in the case of the pursuit of an offender, his power and authority shall extend to all parts of the State of Delaware.

## ARTICLE V

### NOMINATIONS AND ELECTIONS

#### Section 501. Term of Office

The term of office for each member of the Town Commission shall be two years. The President of the Commission shall be elected from within the Commission by a majority of the members of each newly elected Commission immediately following each annual municipal election, and shall serve in the capacity of President for one year until the next said election.

Two (2) Commissioners shall be elected on even years to fill the vacancies created by the expiration of the terms of Office of the two (2) then-outgoing Commissioners. Three (3) Commissioners shall be elected on odd years to fill the vacancies created by the expiration of the terms of Office of the three (3) then-outgoing Commissioners.

#### Section 502. Elections

Annual municipal elections for the Town Commission shall be held on the first Saturday in May at such time and place, within the Town, as shall be determined by the Town Commission. The Commission shall by ordinances set the hours during which the polls shall be open, which shall be no less than six hours at each polling place.

The Town Commission shall have the power to declare no election in the event that only one candidate is available for each elected position within the Town.

#### Section 503. Qualifications for Office

No person shall be eligible to hold office as a President or Commissioner except a person who at the time of filing as a candidate is a citizen of the United States, has attained the age of eighteen years, has maintained legal residency within the Town boundaries for a minimum of twelve (12) consecutive months immediately preceding the filing of candidacy, and has registered to run for elected office.

#### Section 504. Notice of Candidacy

In order to be listed on the ballot for election of Town Commissioner members, each candidate shall file a written notice of intention to seek such office with the Town Clerk at least thirty days (30) prior to the date set for the election. If the Town Commission determines that the candidate does not meet the qualifications of office, it shall reject the notice of intention to seek office and his or her name shall not appear on the ballot. In making the determination, only those members of the Town Commission who are not running for re-election shall be entitled to vote on the question.

#### Section 505. Voter Qualifications

Every person who shall have reached the age of eighteen years, who is a citizen of the United States, and who has resided within the Town limits for ninety (90) consecutive days immediately preceding the election and/or who has been a legal owner of property within the corporate limits of the town of Townsend for ninety (90) consecutive days immediately preceding the election shall be entitled to vote at the annual municipal elections, special elections and referenda, except as otherwise provided in this Charter.

**Section 506. Voter Registration**

The Town Commission shall by ordinance provide for the registration of voters and may prescribe registration and voting places. Such ordinance shall not alter the qualifications of voters as defined in this Charter nor unduly impair the right to vote in any election.

**Section 507. Vacancies in Office**

If any vacancy shall occur in the office of the President by death, resignation, loss of residence in the Town of Townsend, refusal to serve, or otherwise, the remaining Commissioners shall appoint a President Pro Tempore from among themselves to fill such vacancy, and shall be qualified as in the case of a new elected President and shall hold office for the remainder of the unexpired term.

If any vacancy shall occur in the office of Commissioner by death, resignation, loss of residence in the Town of Townsend, refusal to serve, or otherwise, the remaining Commissioners shall appoint an officer pro tempore, and shall be qualified as in the case of a newly elected Commissioner and shall hold office for the remainder of the unexpired term.

**ARTICLE VI****PERSONNEL****Section 601. Town Clerk**

The Town Clerk shall be appointed by the Town Commission. The Town Clerk shall have the power to certify Town documents including, but not limited to, the Town map, ordinances, resolutions, regulations, amendments, contracts, planning documents, rules and by-laws. The Town Clerk shall have charge and custody of the Town seal. The Town Clerk shall have charge and custody of books, journals, records, papers and other effects of the Town and shall keep the same in a safe and secure place. The Clerk shall keep a full and complete record of all the transactions in the Town of Townsend. The Clerk shall give notice of Commission meetings to its members and the public, record all the proceedings of Commission and keep a correct journal of the same in a book or books, to be provided for that purpose and also the papers relative and belonging to said Town, all of which are to be carefully preserved and delivered to the Clerk's successor in office. The Clerk's compensation shall be fixed by the Commission in accordance with Section 604 of this Charter.

**Section 602. Town Attorney**

The Town Attorney shall be appointed by the Town Commission. The Town Attorney shall be an officer of the Town and shall be a member of the Bar of the State of Delaware. It shall be the duty of the Town Attorney to give legal advice to the Town Commission, other officers of the Town and to all Town departments, including the police department, Town offices and agencies. He shall represent the Town in all legal proceedings and shall perform such other legal services as may be required of said Attorney by the Town Commission, this Charter, by law or by ordinance. The Town Commission may procure such additional legal services as it may deem to be required.

**Section 603. Financial Officer**

The Town Financial Officer shall be appointed by the Town Commission. The financial powers of the Town, except as otherwise provided by this Charter, shall be exercised by the Financial Officer under the direct supervision of the Commission.

Under the supervision of the Commission, the Financial Officer shall have the authority and shall be required to:

- a. Supervise and be responsible for the disbursement of all Town monies and have control over all expenditures to assure that budget appropriations are not exceeded.

b. Maintain a general accounting system for the Town in such form as the Commission may require, not contrary to State law.

c. Submit at the end of each fiscal year, or at such other times as the Commission may require, a complete financial report to the Commission.

d. Collect all taxes, special assessments, fees and other revenues of the Town, and all other revenues (including utility revenues) for whose collection the Town is responsible and receive any funds receivable by the Town. The Financial Officer shall have the power to delegate the ability to collect the aforementioned revenue sources upon a simple majority approval of the Town Commission.

e. Assist the Town Commission in making an annual budget no later than thirty (30) days after the beginning of each fiscal year.

#### Section 604. Other Town Employees

The Town Commission may appoint other employees as necessary to assist with the operation and management of the Town of Townsend.

#### Section 605. Compensation of Employees

The compensation of all employees of the Town of Townsend shall be set by the Commission in accordance with the budget or any amendments thereto.

### ARTICLE VII

#### FINANCIAL POWERS AND PROCEDURES

#### Section 701. Fiscal Year

The fiscal year of the Town of Townsend shall begin on the first day of July of each year and shall end on the last day of June of the following year. Such fiscal year shall also constitute the budget and accounting year, except as otherwise provided for herein.

#### Section 702. Budget

The Town Commission may deem it necessary to have a formal budget submitted to said Commission purposes of listing revenues and expenditures of the Town. It shall be submitted by the Town Commission, assisted by the financial officer no later than thirty (30) days after the beginning of each fiscal year. In the event of a lack of compromise within the Town Commission regarding the immediate annual budget, the Town Commission shall have the authority to pass enabling legislation to extend the previous year's budget until a compromise or settlement can be reached by the members of the Town Commission.

#### Section 703. Assessment of Taxes

The Town Commission shall use the assessment by the New Castle County Board of Assessment for all property located within the corporate limits of the Town in lieu of making its own independent valuation and assessment of such property. The assessed values established by New Castle County shall be conclusive for purposes of levying Town taxes, and the Town Commission shall have no authority to hear appeals regarding same.

#### Section 704. Power to Raise Revenue

The Town Commission shall have the power to levy and collect taxes on real property and of ownership within the limits of the Town, except that which is not assessable and taxable by virtue of any law of the State of Delaware, which shall not be more than the sum determined by applying the Townsend's tax rate to the New Castle County Assessments appearing on the Assessor's duplicate, as hereinbefore provided, in any one year clear of all delinquencies and expenses of collection, without a referendum vote as hereinafter provided. The Commissioners shall have the right to grant or refuse, and to charge fees for licenses, and other businesses of any

description within the limits of the Town, to control their use of any property within the Town. The Commissioners shall also have the power to levy and collect franchise fees.

The Town Commission shall have the power to levy and collect taxes on the transfer of ownership of any real property within the limits of the Town, except that which is not taxable by virtue of any law of the State of Delaware.

The Town Commission shall have the power by ordinance to allow discounts for early payment of taxes and for property owners aged 65 or older and to impose reasonable penalties and forfeitures for tax delinquencies. Nothing in this Charter shall be interpreted as giving the Commissioners the power to exempt from taxation any property, except property owned by the Town, County of New Castle, State of Delaware, or the United States.

The Town Commission shall have the power to fix the rates for general utility services operated by the Town and to collect and utilized revenues from such utility services for the benefit of the Town.

#### Section 705. Special Assessments

The Town Commission is empowered to levy a special assessment against any or all real property situated within the corporate limits of the Town, when determined by the Commission to provide a necessary public work improvement or municipal service. Such assessments shall be duly collected, the proceeds of which shall be applied for the payment of the cost of such work, improvement, or service, provided, however, that if such assessment shall apply to all properties within the Town, it shall be approved by majority vote of the Town voters in a special election. If such assessment shall apply to only a portion of property situated within the corporate limits of the Town, the assessment shall be approved by a majority of the Town voters in the affected area in a special election.

#### Section 706. Borrowing Powers

706.1 Short-Term Borrowing, Voter Approval not Required The Town Commission shall have the power to borrow money on the full faith and credit of the Town, without approval of the voters and without regard to the provisions of Section 706.2 of this Charter, such principal sum or sums not exceeding in the aggregate fifty thousand dollars (\$50,000.00), for general purposes only when, in the opinion of the majority of the Town Commission, the needs of the Town require it; provided, however, that any new borrowing under this Section made after the effective date of this act shall, by their terms, be repayable in full within five (5) years of the date of each such borrowing. Any sum or sums so borrowed shall be secured by a promissory note or notes or other evidence of indebtedness of the Town Commission duly authorized by resolution of the Town Commission and signed by the President and attested by the Clerk of the Town with the Town Seal affixed. No Town Commissioner shall be liable for the payment of any such note or any other evidence of indebtedness because it is signed by such Town Commissioner, provided that such signature be authorized by resolution of the Town Commission. Such notes or evidences of indebtedness and the interest thereon shall be exempt from all taxation by the State of Delaware, its agencies and political subdivisions. Any sum(s) of money borrowed on the full faith and credit of the Town shall be repaid from the general funds of the Town. At no time shall the amount of outstanding principal from any such borrowing or borrowings under this Section exceed the sum of fifty thousand dollars (\$50,000.00).

706.2 Long-Term Borrowing, Voter Approval Required In addition to other borrowing powers granted to the Town under this Charter or by State law, the Town Commission shall have authority to borrow money for any proper municipal purpose through the issuance of bonds or other evidence of indebtedness to secure the repayment thereof, on the full faith and credit of the Town, or such other security or securities as the Town Commission shall elect, for the payment of principal thereof and interest due thereon.

706.2.1 Proper Municipal Purpose By way of illustration and not in limitation, "any proper municipal purpose" includes, but is not limited to:

- a. refunding any or all outstanding bonds or other indebtedness of the Town at the maturity thereof or in accordance with any callable feature or provision contained therein;
- b. erecting, extending, enlarging, maintaining or repairing any plant, building machinery or equipment for the manufacture, supplying or distribution of water, sewerage or drainage system, or any of them, and the condemning or purchasing of any lands, easements, and rights-of-way which may be required therefor;
- c. constructing, paving, laying out, widening, extending, repairing and maintaining of curbing and gutters, including storm sewers along the same and the condemning or purchasing of lands, easements or rights-of-way which may be required therefor;
- d. constructing, laying out, widening, extending, repairing and maintaining piers, bulkheads, cross walks, embankments, and the condemning or purchasing of any lands, easements, or rights-of-way which may be required therefor;
- e. defraying the costs to the Town of any other municipal improvement provided for or authorized or implied by the provisions of this Charter; and
- f. paying all expenses deemed necessary by the Town Commission for the issuance of said bonds or other evidence of indebtedness, including bond discount and legal expenses of bond counsel.

**706.2.2 Exempt from Taxation** All bonds or other kinds or forms of evidence or evidences of indebtedness issued by the Town pursuant to the provisions of this Section, and the interest thereon, shall be exempt from all State, County, or Municipal taxes.

**706.2.3 Limit of Aggregate Long-Term Indebtedness** In no event shall the indebtedness of the Town of Townsend, authorized by this Section, at any one time exceed, in the aggregate, five percent (5%) of the appraised value of all real property within the corporate limits of the Town and subject to assessment for the purpose of levying annual taxes as provided in this Charter.

**Section 707. Annual Audit**

The financial books and accounts of the Town shall be audited annually.

ARTICLE VIII

GENERAL PROVISIONS

**Section 801. Eminent Domain**

The Town Commission may, by condemnation proceedings, take private property or may exercise the right to use private property within the corporate limits of the town for any of the purposes authorized by this Charter. The proceedings for such condemnation shall be as prescribed in 10 Del. C. Chapter 61 or any future corresponding provision of law. The right of condemnation shall not extend to property owned by the United States, the State of Delaware, the County of New Castle or any agency thereof.

**Section 802. Indemnification**

The Town shall indemnify, from the general funds of the Town's treasury, to the extent not otherwise covered by appropriate insurance, any person who is a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Town of Townsend itself) by reason of the fact that he or she is or was a member of the Town Commission, President or other duly elected or appointed Town official or employee of the Town of Townsend, or arising out of actions taken by each or any of them in connection with the

performance of their official duties, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonable believed to be in or not opposed to the best interest of the town, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Town of Townsend and with respect to any criminal action or proceeding had reasonable cause to believe that his or her conduct was unlawful; provided, however, that in the event of a monetary settlement, the Town Commission shall first approve the amount and terms of the settlement before the right to indemnification shall vest.

Indemnification as provided in this section shall be made by the Town only as authorized in the specific case upon a determination that indemnification of the members of the Town Commission, President and/or employees is proper in the circumstances because he or she met the applicable standards of the conduct set forth above. Such determination shall be made:

- a. by a majority vote of a quorum of the Town Commission consisting of Commission members who are not parties to such action, suit or proceeding, or
- b. if such quorum is not obtained, by independent legal counsel in a written opinion.

#### Section 803. Limitation on Liability

No claim or cause of action shall arise, and no judgment, damages, penalties, costs or other money entitlement shall be awarded or assessed against the Town of Townsend, or any board, commission or agency of the Town, or any Town public officer, employee or member of such Town instrumentalities, whether elected or appointed, and whether now or previously serving as such, in any civil suit, or before any administrative tribunal on any and all tort claims seeking recovery of damages, unless made pursuant to Subchapter II, entitled 'County and Municipal Tort Claims', consisting of Sections 4010-4013, Title 10 of the Delaware Code or its successor.

#### Section 804. Compendium

It shall be the duty of the Town Commission to compile and reproduce the minutes of official meetings as well as ordinances, regulations, orders, rules or other decisions adopted by Town governmental bodies. The Town shall have a reasonable number of copies printed for the use of the officials of the Town and for public information. Copies of such documents shall be made available to private persons at a reasonable cost. At least two copies of the Charter which shall have incorporated within it all amendments enacted by the General Assembly shall be kept at the Town office. Such copies may be typed, written, photographic processed or a combination of both. The President shall make such further copies of the Charter, from time to time, as may be necessary. Copies of the Town Charter shall be available for the perusal of the Town citizens.

#### Section 805. Separability

If any section, sub-section, paragraph, sentence, clause or other provision of this Charter shall be held to be unconstitutional or invalid by any court of competent jurisdiction, such holding shall not be deemed to invalidate the remaining provisions, sections, sub-sections, paragraphs, sentences, clauses or other provisions of this Charter.

### ARTICLE IX

#### TRANSITIONAL PROVISIONS

#### Section 901. Former Government in Force

All ordinances, resolutions, orders, rules, contracts or regulations in force in the Town of Townsend at the time when this Charter takes effect, regardless of the authority under which originally enacted, shall continue in full force and effect until the Commission otherwise provides by ordinance, except to the extent that any such ordinance, resolution, order, rule or regulation may be in contravention of this Charter.

Section 902. Continuance in Office

All employees of the Town of Townsend at the time this Charter goes into effect shall continue in such employment and shall draw the same rate of compensation as during the month preceding the adoption of this Charter until removed or until the compensation is changed.

The President and Commission holding office on the effective date of this Charter shall continue as the President and Commission until their successors are elected and qualify pursuant to the first general election provided hereunder."

Approved June 30, 1996

## CHAPTER 424

## FORMERLY

HOUSE BILL NO. 332  
AS AMENDED BY HOUSE AMENDMENT NO. 1 AND  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 17, TITLE 18, DELAWARE CODE RELATING TO INSURANCE AGENTS, BROKERS, AND OTHER LICENSEES OF THE INSURANCE DEPARTMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 17, Title 18, Delaware Code by striking said chapter in its entirety and by substituting in lieu thereof the following:

"CHAPTER 17. AGENTS, BROKERS, CONSULTANTS, ADJUSTERS, APPRAISERS, AND LIMITED REPRESENTATIVES

1701. Scope and intent of chapter.

(a) This chapter shall govern the qualifications and procedures for granting licenses to agents, brokers, surplus lines brokers, consultants, fraternal representatives, adjusters, apprentice adjusters, property damage appraisers, apprentice property damage appraisers, and temporary licensees. This chapter shall apply to all lines of insurance including, but not limited to, life, health, variable annuity and variable life, property, casualty, surety, title, credit, motor vehicle, travel, transportation and marine, and to all types of insurers, whether operating on a mutual, stock, reciprocal, fraternal, group or other plan.

(b) This chapter shall establish the qualifications for granting licenses to professional insurance personnel; to establish the procedures to be followed in determining the initial and continuing qualifications for such personnel to provide definitions of their authorities, duties, responsibilities, and prohibitions in a manner that will provide guidance to such personnel and control over such personnel by the Commissioner of Insurance for the benefit and protection of the citizens of the State.

1702. Definitions.

As used in this Chapter:

(1) 'Adjuster' means a licensee of the Department who, as an independent contractor, or on behalf of an independent contractor, insurer, self-insurer, agent, broker, or managing general agent, investigates and/or negotiates settlement of claims arising under insurance contracts.

(2) 'Agent' means a licensee of the Department appointed by an insurer to solicit applications for policies of insurance, or to negotiate for policies of insurance on its behalf and, if authorized to do so by the insurer, to issue conditional receipts, to effectuate and/or to countersign insurance contracts.

(3) 'Appraiser' means a licensee of the Department who assesses property damage to motor vehicles.

(4) 'Apprentice' means a licensee of the Department who is qualified in all respects as an adjuster or appraiser, except as to experience, education, and/or training

(5) 'Broker' means a licensee who for compensation negotiates on behalf of others contracts for insurance from companies to whom he or she is not appointed.

(6) 'Consultant' means a licensee of the Department who for compensation holds himself/herself out to the public as being engaged in the business of offering advice, counsel, opinion, or service with respect to the benefits, advantages, or disadvantages to be obtained under any contract of insurance that could be issued in this State.

(7) 'Fraternal Representative' means a licensee of the Department who is appointed or authorized to act for a society of fraternal organization in the solicitation, negotiation, procurement, or making of a life insurance, accident, and health insurance or annuity contract, for no compensation except as specifically exempted from this requirement by § 6128 of this Title.

(8) 'Interim Agent' means a licensee of the Department who is qualified in all respects as an agent except as to experience, education, and training.

(9) 'Licensee' means a person who is licensed by the Department in accordance with this title.

(10) 'Limited Representative' means a licensee of the Department who is authorized by the Commissioner to solicit or negotiate contracts for a particular line of insurance which the Commissioner may by regulation deem essential for the transaction of insurance business in this State and which does not require the professional competency for an insurance agent or insurance broker's license.

(11) 'Solicitation' or 'solicit' means conduct or communication by any person which is intended to offer or effectuate a contract or policy of insurance for a particular person(s), natural or corporate, and for which a commission or other form of compensation will be paid, or is expected, either directly or indirectly. The term does not include advertisement of insurance contracts or policies which are disseminated generally.

(12) 'Surplus Lines Broker' means a licensee of the Department who acts or aids in any manner in negotiating contracts of insurance with an insurance company not licensed to transact business in this State.

(13) 'Travel Accident & Baggage Agent' means a licensee of the Department who is a ticket-selling agent or other representative of a common carrier who solicits over-the-counter, short-term, non-renewable, travel accident ticket policies and baggage insurance.

#### 1703. Agents.

(a) Any person not duly licensed as an agent, broker, surplus lines broker, or limited representative, who solicits an application for a policy of insurance on behalf of an insurer, shall be deemed an agent and shall thereby become subject to all of the duties, responsibilities, liabilities, prohibitions, and penalties to which an agent of such insurer is subject, and such insurer, by compensating such individual, partnership, or corporation through any of its officers, agents or employees for soliciting said policy of insurance, shall thereby have accepted and acknowledged such individual, partnership, or corporation as its agent in such transaction.

(b) Every agent who solicits or negotiates an application for insurance of any kind shall, in any controversy between the insured or his/her beneficiary and the insurer, be regarded as the agent of the insurer and not of the insured or such beneficiary. This provision shall not affect the apparent authority of an agent.

#### 1704. Brokers

(a) A broker may not issue binders, conditional receipts, or effectuate or countersign insurance contracts on behalf of the insurer.

(b) Any person not holding a broker's license, who acts or aids in any manner in negotiating contracts for insurance for a party other than himself with an insurer that has no

appointed him as an agent, shall be deemed a broker and shall thereby become subject to all the duties, responsibilities, liabilities, prohibitions and penalties to which brokers are subject.

(c) Every broker who acts or aids in any manner in negotiating contracts for insurance for a party other than himself/herself with an insurer who has not appointed the broker as its agent, shall be regarded, in any controversy between the insured or his/her beneficiary and the insurer, as representing the insured or his/her beneficiary and not the insurer; except that any insurer which directly or through any of its agents delivers in this State to any broker a policy of insurance pursuant to the application or request of such broker shall be deemed to have authorized such broker to receive on the insurer's behalf payment of any premium which is due on such policy of insurance at the time of its issuance or deliver.

(d) A licensed agent may be licensed as a broker and be a broker to insurers for which he/she is not licensed as an agent. A licensed broker may be licensed as and be an agent to insurers when so appointed. The sole relationship between a broker and an insurer for which the broker is licensed as an agent shall, as to transactions arising during the relationship, be that of insurer and agent.

#### 1705. Surplus Lines Brokers.

(a) All transactions entered into by a surplus lines broker as such shall be subject to Chapter 19 of this title.

#### 1706. Consultants.

(a) A consultant shall serve the interests of his/her clients alone and shall render to his/her clients such advice, counsel, opinion or service as meets the clients' needs and interests.

(b) No consultant may accept any fee other than that fee agreed upon in advance by the consultant and his/her client.

(c) No consultant may accept any fee, commission, or other consideration from an insurer for any activity for which the consultant has received or will receive a fee from his/her client.

(d) Before any consultant offers any advice, counsel, opinion, or service to his/her client, a written agreement on a form approved by the Commissioner shall be prepared by the consultant and shall be signed by both the consultant and the client. The agreement shall outline the nature of the activity to be performed by the consultant and the amount of the fee to be paid to the consultant by the client. The consultant shall retain a copy of each such agreement for not less than three years after the completion of his/her activities under the agreement and the consultant shall make the agreement available for inspection by the Department upon the Commissioner's request.

(e) A duly licensed agent or broker shall be entitled to serve as a consultant without a separate license therefore provided he/she complies with all other provisions of this section.

#### 1707. Limited Insurance Representative.

A limited representative is subject to all the duties, responsibilities, liabilities, prohibitions, and penalties to which agents are subject as pertains to the particular line or lines of insurance for which the limited representative holds a license.

#### 1708. Fraternal Representatives.

All transactions entered into by a fraternal representative as such shall be subject to the provisions of Chapter 61 of this title.

1709. Adjusters.

(a) None of the following shall be deemed to be an adjuster.

(1) An attorney-at-law licensed to practice law in this State who negotiates insurance losses from time to time and incidental to the practice of law, and who does not advertise or represent that he is an adjuster.

(2) Employees of insurers, brokers, or agents who work in the office of licensed employers, but who do not negotiate the settlement of claims as a part of their duties.

(3) A licensed agent or broker who adjusts or assists in the adjustment of losses arising under policies of insurance issued through or serviced by such agent or broker.

(4) Any person who negotiates and/or settles claims arising under life and health insurance policies.

(b) No adjuster's license shall be required for any adjuster sent into this State on behalf of an insurer for the investigation or adjustment of a particularly unusual or extraordinary loss, or series of losses, resulting from a catastrophe common to all such losses; provided that such adjuster shall furnish to the Commissioner written notice within 10 calendar days of any such catastrophic insurance adjustment work.

(c) Every adjuster who investigates any claim under any insurance contract covering property located in this State shall promptly report to the Commissioner any facts or circumstances found and from which he/she believes fraud has been committed or attempted pursuant to Chapter 24 of this title.

(d) An adjuster shall be authorized to represent an insurer, self-insurer, agent or broker in investigating and negotiating settlement of claims arising under insurance contracts.

(e) An adjuster shall not be authorized to operate as a 'public adjuster,' representing directly or indirectly an insured for compensation in the investigation and negotiation of a settlement of a claim arising under an insurance contract.

(f) No insurance company, agent, adjuster, or appraiser or any person employed to perform their service shall recommend the use of a particular service or source for the repair of property damage without clearly informing the claimant that the claimant is under no obligation to use the recommended repair service.

(g) No insurance company, agent, adjuster, or appraiser or any other person employed to perform their service shall accept any gratuity from a repair service for recommending that repair service to a claimant.

1710. Appraisers.

(a) An appraiser shall be authorized to examine damaged property in accordance with § 1716(d) of this Title.

(b) In any such examination or estimate conducted pursuant to this section, the appraiser shall insure that the cost of repairing and/or replacing all damaged and/or missing parts which affect the safe operation of the vehicle are included in the estimate of the probable cost of repair or replacement; estimates of the probable cost of repair or replacement shall not be based upon the use of used or reconditioned parts where the use of such parts may affect safe operation of the vehicle.

(c) An appraiser must provide the vehicle owner or the appropriate repair facility with such itemized legible repair appraisal. All appraisal(s) are to include the licensee's name.

(d) All appraisals must be based on the appraiser expertise and not biased or influenced by any individual, owner, repair facility, or insurer. The licensee will negotiate in good faith any discrepancies with the repair facility to restore damaged property to its pre-damaged condition.

1711. Apprentice Adjusters and Appraisers.

(a) An apprentice license shall be issued and valid for a period not exceeding 12 months and may be extended or renewed only upon the written approval of the Commissioner.

(b) An application for an initial license as an apprentice adjuster or apprentice appraiser shall be accompanied by a statement from a duly licensed adjuster or appraiser assuming full responsibility for the actions of such applicant taken under the requested license and certifying that such applicant is a full-time employee under the supervision of the licensed adjuster or appraiser. Apprentice adjusters and apprentice appraisers are restricted to participation in factual investigation and tentative closing of losses subject to the review and final determination of a licensed adjuster/appraiser.

(c) Compensation of an apprentice adjuster or apprentice appraiser shall be on a salary basis only.

1712. Travel Accident & Baggage Agents.

(a) The Commissioner may issue a travel accident and baggage agent license without examination to a ticket selling agent or other representative of a common carrier upon filing with the Commissioner an application for a license and appointment and paying the fee prescribed for agents under § 701 of this Title.

(b) A license so issued enables the licensee to solicit and sell only over-the-counter, short-term, nonrenewable travel accident ticket policies and baggage insurance of such insurer.

1713. License Requirements.

(a) No person shall act as or hold himself/herself out to be a licensee of this Department, an insurance agent, or broker for any line or lines of insurance unless duly licensed for such line or lines in accordance with this Title.

(b) A license shall be issued to an applicant by the Department upon proper application attesting to the applicant's qualifications, as verified to the Department under § 1721 of this Title. A license issued pursuant to this title shall authorize the applicant to transact insurance business according to its terms.

(c) Except as provided in (d), all licenses issued pursuant to this title shall be valid and effective unless and until:

(1) The licensee fails to complete the minimum continuing education credit units prescribed by regulation for license continuation, or the licensee otherwise ceases to be qualified to hold such license, and/or

(2) the license is revoked or terminated pursuant to provisions of this chapter.

(d) the license of agents or fraternal representatives shall remain in effect so long as at least one current insurer's appointment for each line of authority for which the licensee is qualified remains in effect. However, during such time period, no new business shall be written unless with a company by which an agent is appointed. One year following the termination of an agent's final appointment in a line or lines of authority, the Commissioner shall recall the license and delete such line or lines of authority therefrom for which no appointment has been filed.

(e) No agent shall place any insurance with any insurer as to which he/she does not hold a license and appointment as agent under this chapter

(f) No person shall act as an appraiser for property damage claims on behalf of any insurance company or firm or corporation engaged in the adjustment or appraisal of property damage claims unless such person has first secured an appropriate appraiser or adjuster license from the Commissioner.

(g) The Commissioner shall prescribe all forms required under this chapter as to licenses and appointments.

#### 1714. Insurer's Appointment.

(a) Each insurer shall file with the Commissioner, in writing, an appointment identifying such insurer's agent(s), and/or fraternal insurance representative(s) in this State. The appointment shall be signed by a representative of the insurer authorized, in writing, to appoint and terminate the employment of agents on behalf of the insurer and shall specify the individual members of any firm, corporation, or partnership to whom authority is granted. No agent shall solicit insurance on behalf of an insurer prior to the filing of an appointment pursuant to this subsection.

(b) The initial application for a license for an agent or fraternal representative shall be accompanied by an insurer's appointment as above provided.

#### 1715. Termination of Appointment.

(a) Subject to the terms of any agreement between an insurer and agent, if any, an insurer or agent may terminate an agency appointment at any time. If termination is by the insurer, the insurer shall promptly give written notice of termination and the effective date thereof to the Commissioner and to the agent. Failure of the insurer to notify the Commissioner of the termination of an appointment, regardless of whether terminated by the insurer or the agent, shall result in a non-rebuttable presumption that the agent or fraternal representative continues to be authorized to bind the insurer.

(b) All notices of termination shall be filed on forms prescribed by the Commissioner and shall set forth the cause for such termination.

(c) If termination is based upon violation of any of the duties set forth under § 1718 of this title, the insurer shall so notify the Commissioner. Any information, document, record, or statement provided pursuant to this section may be used by the Commissioner in any action taken pursuant to this title; provided, however, such information shall be absolutely privileged in any civil action between the insurer and agent, and no cause of action shall exist by an agent against an insurer for furnishing such information to the Commissioner.

#### 1716. LINES OF AUTHORITY ENUMERATED.

(a) An insurance agent may qualify for licensing for the following lines of authority:

(1) Life insurance, as defined in § 902 of this title.

(2) Variable annuity (including variable life), which means an annuity contract in which the periodic benefit varies usually in relation to security market values, a cost of living index, or other variable factor, in contrast to a fixed or guaranteed annuity contract.

(3) Health insurance, as defined in § 903 of this title.

(4) Medicare supplement insurance and long-term care insurance, as a supplement to a license issued pursuant to (3) above.

- (5) Title insurance, as defined in § 908 of this title.
  - (6) Fire and allied lines (property), as defined in § 904 of this title.
  - (7) Casualty (liability, home owners), as defined in § 906 of this title.
  - (8) Fidelity and surety, as defined in § 905 of this title.
  - (9) Marine and transportation insurance, as defined in § 907 of this title.
  - (10) General lines, which includes all lines of authority defined above except life insurance, variable annuity, and title insurance.
- (b) A broker's license may be issued for life insurance and/or general lines, as defined above.
- (c) Surplus lines broker's qualification:
- (1) A surplus lines broker's license shall be issued only to licensed general lines brokers who are bona fide residents of the State.
  - (2) Such license shall include all lines of insurance except life, title, and variable annuity.
- (d) A property damage appraiser's license shall convey authority for the appraisal of damage to motor vehicles as defined in 21 Del. C. § 101.
- (e) An adjuster's license shall convey authority to investigate and negotiate settlement of claims on behalf of licensed agents, brokers, self-insurers, or insurers in one or more of the following lines of insurance:
- (1) Fire and allied lines.
  - (2) Casualty insurance.
  - (3) Fidelity and surety.
  - (4) Automobile insurance.
  - (5) Marine and transportation insurance.
- (f) A limited representative may be qualified and licensed and a qualified insurance agent may hold one or more of the following limited lines of authority:
- (1) Vehicle liability and vehicle damage.
  - (2) Credit insurance lines.
  - (3) Life insurance or annuity products used solely to fund a pre-arranged funeral program.
- (g) Continuing education requirements prescribed by regulation of the Insurance Commissioner for limited representatives shall include only those lines for which the limited representative is certified.

#### 1717. Exemptions to Licensing Requirement.

A license as an insurance agent, broker, fraternal representative, adjuster, or appraiser shall not be required of any of the following:

- (1) A regular salaried officer or employee of an insurance company, or of a licensed insurance agent, broker, or surplus lines broker, if such officer or

employee's duties and responsibilities do not include the negotiation or solicitation of insurance policy provisions.

(2) Persons who secure and furnish information, but who do not solicit or make calls for the purpose of the sale of group or wholesale life insurance, annuities, or group, blanket, or franchise health insurance as defined in this title; or, enrolling individuals under such plans or issuing certificates thereunder or otherwise assisting in the administration of such plans, where no commission is paid for such services.

(3) Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that such officers, employers, employees or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving insurance issued by a licensed insurance company; provided that such employers, officers, employees, or trustees are not compensated directly or indirectly by the insurance company issuing such insurance.

#### 1718. Duties of Licensed Insurance Personnel.

(a) It is the duty and responsibility of all persons licensed in accordance with this chapter to transact insurance business hereunder and to conduct such business, at all times, in accordance with the highest standards of fidelity, good faith, and sound business principles. Each licensee shall conduct business hereunder to insure that each transaction undertaken will, to the extent of the licensee's capabilities, meet the needs of the insurance-buying public. Each licensee is responsible for continuing their professional education as provided by statute or regulation.

(b) No licensee shall:

(1) Employ manipulative, deceptive, misleading, or fraudulent practices, devices, or representations to induce the purchase of any policy of insurance and/or the settlement of any claim under any policy of insurance.

(2) Make recommendations for the purchase of new insurance or the termination or surrender of existing insurance unless such licensee has reasonable grounds for believing that such recommendations are suitable for the client on the basis of available facts and information known to such licensee.

(3) Solicit, negotiate, or place insurance unless the licensee discloses all material facts relevant to the proposed insurance to such licensee's client.

(4) Make extravagant claims regarding the management or investment ability of a particular insurer.

(5) Employ any chart, table, sales aid, or device which misrepresents or inadequately represents policy benefits, values or limitations in comparison with those of competitive insurers or insurance products.

(6) Engage in a practice known as "churning policies" as defined by regulations promulgated by the Department.

(c) A licensee shall be personally liable for violations hereunder and may not avoid such liability by reliance upon the existence or continuation of any business practice, or upon the use of any products, printed sales aid, or device offered or utilized by any insurer which such licensee represents or with whom the licensee transacts such insurance business.

(d) The Commissioner shall hear and determine alleged violations hereunder; penalties for violations shall be as provided in § 1732 of this Title.

#### 1719. Interim Agent's License.

(a) The Commissioner may, at his/her discretion, and upon application, issue an interim agent's license to any applicant, provided that the applicant meets the qualifications described in § 1721 of this title, except for the qualifications regarding education and training, and provided further that the applicant is sponsored by an insurance company authorized to transact insurance business in this State.

(b) The sponsoring insurance company, at the time of submitting an application for an interim agent's license to the Commissioner's office, shall certify that it:

(1) has instructed the applicant in the duties and responsibilities of an agent;

(2) has verified, by an examination approved and conducted by the Insurance Commissioner, that the applicant has attained at least a minimum level of competency as an agent; provided that such examination shall be limited to the determination that the applicant has mastered the basic definitions of policy terms and forms, and has an understanding of an agent's duties, obligations, and responsibilities, including legal and ethical duties, obligations, and responsibilities;

(3) has conducted an investigation of the applicant's background and character and has ascertained that the applicant has the qualifications required by § 1721(a)(2) of this title;

(4) does assume responsibility for the applicant's actions pertaining to all transactions undertaken by authority of the requested interim agent's license.

(c) An interim agent's license may be issued for either life and health insurance authority or for one or more of the following lines of authority: fire, casualty, fidelity and surety, or marine and transportation. No individual may hold more than one interim agent's license at the same time.

(d) An interim agent's license issued for life and health insurance, fire, casualty, fidelity and surety, or marine and transportation insurance authority shall not be valid for more than 180 days. An interim license may only be renewed or extended upon written approval of the Commissioner and may not exceed a period of one year.

(e) An individual holding an interim agent's license shall not have authority to bind an insurance company to a risk except that a conditional receipt may be issued in the case of applications for life insurance. All transactions of an individual holding an interim agent's license shall be submitted to the sponsoring insurance company through a licensed resident agent of the sponsoring insurance company.

#### 1720. Agency Licenses.

An agency lawfully organized under the laws of the State of Delaware shall have an agency license of the same line of authority as each individual licensee acting on behalf of the agency. Each individual acting as or representing to be an adjuster, agent, or broker on behalf of the agency shall be registered as an agency member. Termination of any licensee from the list of registered members must be filed by the agency within (30) thirty days from the date of termination. Failure to provide notification may subject the agency to a penalty as otherwise provided in this Title.

#### 1721. Prerequisites For An Insurance License.

(a) The Commissioner shall not issue, continue, or permit to continue any license of any agent, fraternal representative, broker, surplus lines broker, consultant, adjuster, or motor vehicle physical damage appraiser, unless the applicant for or holder of the license shall:

(1) Be at least 18 years of age, in the case of natural persons.

(2) Be competent, trustworthy, financially responsible, and of good reputation. Each application for an initial license shall contain the certification of the sponsoring insurance company that it has investigated the applicant's background and that the applicant meets this requirement.

(3) Have demonstrated his/her competence to act as to the type and line of authority applied for by successfully completing a written examination approved by the Commissioner, unless specifically exempted from such examination by this chapter.

(4) Have filed with the Commissioner a request that he/she be appointed from an insurance company qualified to transact insurance business in this State, if the application is for the issuance of a license for an agent or limited or fraternal insurance representative.

(5) Certify that the applicant does not intend to use the license principally for the purpose of writing controlled business as defined in § 1729 of this title.

(6) Pay to the Commissioner all fees required by Chapter 7 of this title.

(b) An applicant may qualify for a resident license if he/she resides in this State or maintains his/her principal place of business in this State, provided that any resident license shall be void if the holder thereof also holds or makes application for a similar license in any other state or jurisdiction, or thereafter claims to be a resident of any other state or jurisdiction.

(c) An applicant may qualify for a nonresident license only if he/she holds a similar license in another state of the United States, province of Canada, or other foreign country, complies with § 1722 of this title and pays to the Commissioner all fees required by this chapter. A nonresident license may be issued without the applicant taking any written examination if the insurance commissioner of the state of the applicant's residence certifies to the Commissioner that the applicant has passed a similar written examination or has been the continuous holder of a similar license issued prior to the time such written examination was required in the state of his/her residence. A nonresident license shall grant the same rights and privileges afforded to the holder of a resident license, except as provided in § 1722 of this title. Similarly, the holder of a nonresident license shall be subject to all the duties, responsibilities, liabilities, and prohibitions to which a resident holder of a license is subject.

(d) Change in residency status.

(1) A licensed nonresident agent, after becoming a Delaware resident, may retain authority under the nonresident agent license for a maximum of 60 days or until a resident license is issued, whichever occurs first, and at which time all authority granted under the non-resident license shall cease.

(2) A licensed resident agent, after becoming a resident of another state, may retain authority in Delaware under the resident agent license for a maximum of sixty (60) days or until a non-resident license is issued, whichever occurs first, and at which time all authority granted under the resident license shall cease.

(4) Criteria used by the Commissioner to establish residency shall include, but not be limited to:

- a. Jurisdiction for payment of state taxes;
- b. jurisdiction for automobile driver's license and motor vehicle registration.
- c. location of voter registration.

d. location of principal residence, such as owned or rented dwelling, condominium or apartment; and

e. location of principal place of business as described in § 1721(b) of this chapter.

#### 1722. Special Qualifications.

(a) Every applicant for a license as a broker shall meet the prerequisites described in § 1721 of this title and, in addition thereto, shall file with the Commissioner a bond in favor of any citizen of the State in a face amount of not less than \$5,000 and guaranteed by a corporate surety approved by the Commissioner. The bond shall be continuous in form and shall be conditioned upon full accounting and due payment to all persons entitled thereto of any funds coming into the broker's possession as a result of the transaction of insurance business. The bond shall provide that it may not be terminated or canceled unless at least 30 days' prior written notice thereof has been given to the licensee and the Commissioner.

(b) Every applicant for a license as a broker or agent requesting authority for lines of casualty, fire, fidelity and surety, or marine and transportation shall meet the prerequisites described in § 1721 of this title and, in addition thereto, shall establish and maintain in a commercial bank in this State one or more trust accounts separate from accounts holding his/her personal, firm, or corporate funds, and shall forthwith deposit and retain therein all premiums and return premiums received by him/her, pending due transmittal of such premiums or return premiums to the appropriate insurance company or insured; provided, however, he/she may deposit and commingle in the same such trust account all premiums and return premiums received by him/her, if the persons to whom such funds are owed and the amount owed to each are reasonably distinguishable from accounts and records maintained by the applicant. The Commissioner may control the procedures for maintaining such trust accounts by regulation.

(c) Every applicant for a nonresident license shall meet the requirements of subsection (b) of this section, except that the trust account may be established and maintained in a commercial bank in the state where the applicant resides.

(d) Every applicant for a license as a broker must have held a license as an agent for at least two years for all lines of insurance for which he/she has applied for a license or must have had special education, training, or experience which the Commissioner finds sufficient to adequately demonstrate the applicant's competence in fulfilling the responsibilities of a broker. Suspension or revocation of the agent's license shall result in the immediate revocation of the broker's license.

(e) Every applicant for a license as a surplus lines broker must be a bona fide resident of this State and must have held a license as a general lines broker for at least one year.

(f) Every applicant for a license as an apprentice adjuster or apprentice property damage appraiser must file with the Commissioner a certification from one holding a license as an adjuster or property damage appraiser in which said holder of the license assumes responsibility for the applicant's training and for all actions undertaken by the applicant pursuant to the requested license.

(g) Every applicant for a license as an agent for the line variable annuity must hold a license as a life insurance agent and must be registered with the National Association of Security Dealers.

#### 1723. Nonresident License Fees.

Notwithstanding any other provision of this title, every applicant for a nonresident license shall be subject to the same fees as a resident applicant.

1724. Exemption From Written Examination.

(a) The following shall be exempt from the requirement for a written examination:

(1) Every applicant for a resident license covering the same line or lines of insurance for which the applicant previously held a license in this State, other than a temporary license, within 12 months next preceding the date of the application, unless such previous license was revoked, suspended or renewal thereof was refused by the Commissioner.

(2) Every applicant for a nonresident license who resides in another state or jurisdiction which extends a similar exemption for Delaware applicants and who has held a similar license in any other state within 12 months prior to his/her application for a license in this State and who files with the Commissioner a certification from the public official having supervision of insurance business of such other state of jurisdiction as to the applicant's license and good standing in such other state or jurisdiction. A facsimile signature and seal of the certifying public official will be sufficient.

(3) Every applicant who has attained the designation of Chartered Life Underwriter shall only be required to take that portion of the written examination for lines of life, health, and variable annuity pertaining to the rules, regulations, or State laws.

(4) Every applicant who has attained the designation of Chartered Property and Casualty Underwriter shall only be required to take that portion of the examinations for fire, casualty, surety or marine and transportation pertaining to the rules, regulations, and State laws.

(5) Every applicant for a license as an agent for title insurance who is an attorney.

(6) Every applicant for a license as a fraternal representative qualified as described in § 6128 of this Title.

(7) Every applicant for a license as an adjuster who has successfully completed all phases of the Insurance Institute of America qualification requirements and/or attained the designation of Chartered Property and Casualty Underwriter.

1725. Written Examinations.

(a) The Commissioner shall subject each applicant, not otherwise exempted from the requirement of written examination, to a written examination which the applicant must personally take and pass to the satisfaction of the Commissioner.

(b) If the applicant is other than a natural person and is not otherwise exempt, the written examination must be successfully taken by each individual who is to be named in the license for the partnership or corporation.

(c) Each written examination shall be approved for use by the Commissioner and shall reasonably test the applicant's knowledge of the lines of insurance, policies, and transactions to be handled under the license applied for and may also test the applicant's knowledge of the duties and responsibilities of a licensee and of the pertinent insurance laws of the State.

(d) There shall be a written examination for each line of insurance, and an applicant shall take and pass the examination for each line the applicant proposes to transact under a license.

(e) All written examinations shall be conducted and administered in accordance with regulations issued by the Commissioner. Such examinations may be administered and graded by an independent testing service, as specified by contract.

(f) The Commissioner may require a reasonable waiting period between reexaminations for any applicant who twice fails to pass a written examination covering the same line of insurance. The waiting period shall not exceed six months.

(g) The Commissioner may, by regulation, establish a prerequisite for examination and requirement for a reasonable number of hours of formal instruction presented by an educational institution. Such regulation, if issued, will specify the number of hours required for life and health or the property and casualty lines, or for both, and will include the procedures for course approval and verification of the training received.

#### 1726. Additional or Continuing Education.

In addition to meeting the standards prescribed in other sections of this chapter for the issuance of a license, the Commissioner may promulgate regulations and/or prerequisites which will establish reasonable standards and criteria for requiring additional or continuing education of licensees, in order to ensure the maintenance or improvement of a licensee's insurance skills and knowledge. Failure to provide proof of meeting continuing education requirements may result in suspension of license(s). No regulation may require additional or continuing education for limited representatives qualified and licensed under § 1716(f) of this title in any lines other than those for which licensure has been granted.

#### 1727. Application For a License.

(a) An application for a license by an agent, broker, fraternal representative, adjuster, and property damage appraiser shall be submitted, on forms or electronically as approved by the Commissioner provided for that purpose, to the Commissioner upon receipt of notice from the Commissioner that the examination for such license has been satisfactorily completed by such applicant.

(b) Applications will be submitted in accordance with the regulations issued by the Commissioner and shall be accompanied by all fees prescribed in § 701 of this title.

#### 1728. License.

##### (a) Form.

(1) The license shall contain the name, resident or nonresident status, type, and line or lines of authority conveyed and such other information as the Commissioner shall, from time to time, require.

(2) The license of an agent shall not identify the insurer or insurers for whom the agent is authorized to act, except as provided in § 1719 of this title.

(3) A licensee qualified as an agent or fraternal representative shall have the authority to represent as many insurers as may file appointments with the Commissioner designating the licensee as agent.

##### (b) Records.

(1) The licensee shall maintain at his principal place of business the license issued by the Commissioner, together with such records as may be reasonably required by the Commissioner. Such records shall show, for each policy or contract placed or countersigned by or through the licensee, names of the insurers, insureds, policy number, expiration date thereof, premium payable under the terms of the policy or contract, and such other information as the Commissioner may, from time to time, require. Records shall be retained and available for inspection by the Commissioner for a period of three years.

(2) Nothing in this section shall prohibit the licensee from maintaining its principal place of business at his/her residence.

(3) All licenses issued hereunder shall be and remain the property of the State. Upon expiration, termination, suspension, or revocation of a license, the licensee or other person having custody or control of such license shall forthwith deliver it to the Commissioner, either in person or by mail. In the event of loss or destruction of a license, the Commissioner may accept in lieu of surrender thereof a signed statement from a licensee or other individual certifying the loss or destruction thereof.

(4) Every license holder shall notify the Commissioner of any change in residential or business address within 30 days thereof. A license may be suspended for failure to give notice of change of address hereunder.

(5) The Commissioner may issue a new license for any lost, stolen, or destroyed license issued pursuant to this Title upon written request from the licensee and payment of appropriate fees.

(c) Term.

All licenses issued under this chapter, except temporary licenses, shall be valid and effective unless and until:

(1) The license is revoked or terminated pursuant to § 1732 of this title.

(2) The licensee no longer qualifies for licensing under § 1712 of this title.

(3) The licensee fails to complete the minimum continuing education requirements established by regulation.

(4) One year after the termination of the last remaining insurer's appointment if licensed as an agent or limited or fraternal representative.

(5) The licensee fails to abide by the terms and conditions set forth in an order or rule of the Commissioner.

(d) The Commissioner shall prescribe the date for and procedures to be followed in filing continuation requests for appointments by published bulletin or regulation.

(e) The authority of agents or fraternal representatives shall remain in effect so long as at least one current insurer's appointment for each line of authority for which the licensee is qualified remains in effect. One year following the termination of an agent's final appointment in a line or lines of authority, the Commissioner shall recall such licensee's license and delete such line or lines of authority therefrom for which no appointment has been filed.

#### 1729. Controlled Business.

(a) For the purpose of assisting in the enforcement of the laws against rebates, and to help prevent the use of undue influence or coercion in the securing of insurance business, the Commissioner shall not grant an agent or broker license to any person if the Commissioner has reasonable cause to believe that:

(1) During the calendar year immediately preceding the request for renewal of any such license, the license has been used for the purpose of writing controlled business; or

(2) The circumstances of the applicant for such license are such as to induce the Commissioner reasonably to believe that during the 12-month period

immediately following issuance or renewal of the license, if so issued or renewed, the license will be used for the purpose of writing controlled business.

(b) A license shall be deemed to be used for the purpose of writing controlled business if the aggregate net amount of commissions or other compensation received or to be received by the licensee or applicant on controlled business written or to be written during the period involved, exceeds 25% of the aggregate net amount of commissions or other compensation received or to be received by the licensee or applicant on all insurance business written or to be written by him/her during the same period.

(c) "Controlled business" means insurance procured or to be procured by or through such applicant or licensee upon:

(1) Said applicant/licensee's own life, person, property, or interests, or those of a spouse or relatives by blood or marriage to the second degree;

(2) The life, person, property, casualty risks, surety risks, or title risks of his/her employer, principal, firm, officer, director, stockholder, client or any person whom such applicant/licensee may serve under professional service contract, or of any officer, director, stockholder, or member of his/her employer or firm, other than members of mutual insurers, or of any spouse of any such employer, officer, director, stockholder, or member;

(3) The property or interests of any corporation of which he has stock control, or of which the stock control is held by any combination of himself, his firm, his employer, controlling stockholders of his employer, his directors, officers, or stockholders and spouses of any of them; the property or interests of any subsidiary of any such corporation;

(4) The life, person, property, or interests of his ward, or his employees, or upon persons, property, or interests under his supervision or control as trustee, lawyer, agent, or receiver, or as administrator or executor of any estate; or

(5) Property sold on contract by him as agent or principal, his officer, director, or stockholder, or by his employer or his firm, or by any officer, director, stockholder, or member of his employer or firm, except in the case of real property.

(6) Nothing in this section shall apply to:

a. Insurance protecting the interests of a sales or financing agency and a motor vehicle sold or financed by such agency,

b. Insurance of the interest of a real property mortgagee and mortgaged property, and

c. Any insurance issued in connection with a credit transaction and insurance which is sold as an incidental coverage to the transaction.

#### 1730. Commissions; Payment; Acceptance; Fees.

(a) No insurer, insurance agent, insurance broker, surplus lines insurance broker, or consultant shall pay, directly or indirectly, any commission, finder's fee, brokerage fee, or other valuable consideration to any persons for services as an insurance agent, broker, or surplus lines insurance broker within this State, unless such person held at the time such services were performed a valid license for that line of insurance as required by the laws of this State; nor shall any person not duly licensed by this State as an insurance agent, insurance broker, or surplus lines broker at any time such services were performed, accept any such commission, brokerage fee, or other valuable consideration.

(b) Any person duly licensed under this chapter may pay or sign his/her commissions, or direct that his commissions be paid to a licensed partnership, firm, association, or corporation of which he/she is an officer, employee, or agent.

(c) This section shall not prohibit payment or receipt of renewal or other deferred commissions to or by any person otherwise entitled thereto under this chapter.

(d) This section shall not prohibit payment or receipt of commissions or fees in connection with application for insurance submitted under the Delaware Assigned Risk Plan (§ 2527 of this title) or Fair Plan (§4107-4113 of this title), nor to individuals holding temporary licenses.

(e) No licensed agent or fraternal insurance representative shall charge or collect a fee which has not been filed as a part of the premium in accordance with § 2503 of this title.

(f) This section shall not preclude the collection of fees by a licensed broker who may charge a service fee for services rendered to a client pursuant to an express agreement, made in advance, for the payment of such service fees.

(g) This section shall not preclude the payment of commissions as directed by Court order.

#### 1731. Nonresident Power of Attorney.

(a) Every nonresident licensed under this chapter shall designate the Commissioner, by written instrument, as his/her attorney upon whom may be served all legal process issued in connection with any action or proceeding brought or pending in this State against or involving the licensee and relating to transactions arising from or in connection with licensing hereunder. The appointment shall be irrevocable and shall continue in force so long as any action or proceeding may be commenced. The Commissioner shall prescribe and furnish the designation forms.

(b) Process shall be served upon the Commissioner or any Deputy Insurance Commissioner or such other person(s) within the Department as the Commissioner shall designate, in duplicate, and shall be accompanied by a process fee as established in § 701 of this title. Upon receipt of such process, the Commissioner shall forthwith transmit a copy thereof by registered or certified mail, with return receipt requested, to the nonresident licensee at his business address of record with the Commissioner.

(c) Service of process and the transmission thereof to the licensee hereunder shall, for all intents and purposes, constitute personal service of process upon the licensee.

#### 1732 Violations; Penalty Bond.

(a) The Commissioner may require an individual, firm or corporation licensed under this chapter to post a monetary penalty bond of not less than \$25 and not more than \$30,000 with the Department if, upon investigation, the Commissioner finds reasonable grounds to believe that such individual, firm, or corporation has committed one or more of the violations set forth in subsection (c) of this section. Such bond shall be held by the Department and a hearing shall be held not later than 60 days following imposition of the bond, except upon application of the licensee, the hearing date may be postponed to a later date. Following the hearing, the Commissioner shall refund all sums held hereunder if no violation shall be established and may, if a violation or violations be found, declare forfeit all or part of such bond.

(b) Failure to post bond within 10 days shall automatically suspend the licensee's authority to transact business under this chapter until such time as the Commissioner has conducted a hearing and issued a final order hereunder.

(c) The Commissioner may require a monetary penalty bond upon a finding of probable cause to believe that any one or more of the following offenses have been committed and may, following hearing, suspend, revoke, refuse to issue, and/or refuse to continue a license for any person or firm found to have committed one or more of the following offenses:

(1) Concealment of any material fact which, if known to the Commissioner at the time of issuance of a license hereunder would have been grounds for refusal to issue such license;

(2) willful violation of or noncompliance with any insurance laws or any lawful regulation, rule, or order of the Department, Commissioner, or of a commissioner or department of insurance of another state;

(3) any materially untrue statement in a license application;

(4) obtaining or attempting to obtain a license through misrepresentation or fraud;

(5) improperly withholding, misappropriating, or converting to one's own use any money belonging to policyholders, insurers, beneficiaries, or others received in the course of transaction of insurance business;

(6) wilful misrepresentation of the terms of any actual or proposed insurance contracts;

(7) conviction of any unfair trade practice or fraud defined in this code;

(8) use of fraudulent, coercive, or dishonest practices or incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere;

(9) suspension or revocation of the licensee's license in another state, province, district, or territory;

(10) forgery by the licensee in connection with any application for insurance;

(11) offering or receiving assistance in completion of any examination or issuance or renewal of an insurance license;

(12) conviction by final judgment, of a felony or a crime involving dishonesty.

(d) The Commissioner's order to post a penalty bond shall set forth the offense charged, the amount to be posted and the right to the licensee to request a hearing on all questions of fact pertaining to the violation charged.

(e) Upon issuance of an order to post bond, the Commissioner shall promptly notify any insurer currently authorizing the licensee to represent such insurer.

#### 1733. Termination or Suspension of License; Fines.

(a) The Commissioner may suspend a license for not more than 12 months or may revoke or refuse to continue any license issued under this title if, after a hearing, it is determined that the licensee has committed one or more of the violations enumerated in § 1732(c) of this title.

(b) In lieu of such suspension, revocation, or refusal to continue, the Commissioner may levy a fine upon the licensee of not less than \$25 and not more than \$10,000 for each such violation. The Commissioner's order shall specify the date upon which such fine shall be paid and shall revoke the license of any licensee failing to comply with such order. The date on which payment shall be due shall be not less than 15 days following the date of the Commissioner's order. The Commissioner may institute a civil action to recover fines so levied and shall pay over all fines paid and recovered to the State Treasurer.

(c) In the event of suspension, revocation, refusal to continue any license hereunder the Commissioner shall give notice of such action to all insurers represented by the licensee.

(d) The Commissioner shall not again issue a license under this title to any person whose license has been revoked until:

(1) The expiration of one year from the date of revocation; and

(2) Until such person shall qualify for licensing in accordance with the applicable provisions of title. A person whose license has been revoked or suspended on two occasions shall not again be licensed under this title.

(e) The license of a firm, partnership, or corporation may be suspended, revoked, or refused if the Commissioner finds, after a hearing, that one or more of the violations set forth in § 1732 of this title has been committed by an individual employed by such partnership, firm, or corporation licensed and that such violation or violations were known or should have been known to one or more of the partners, officers, or managers acting on behalf of such firm and that such violation was neither corrected nor reported to the Insurance Department.

(f) The Commissioner may place any individual, partnership, corporation, or firm on probation for a period of one year for violation of any insurance laws, rules, regulations, and orders. The probationary period will not exceed one (1) year.

#### 1734. Hearings.

(a) All hearings held pursuant to this Chapter shall be governed by the Administrative Procedures Act, 29 Del. C. § 101 et seq. and such additional implemented regulations as may be published by the Commissioner.

#### 1735. Conservation of Agent or Broker Business.

(a) If the Commissioner finds that the business of any licensed general lines agent or broker in this State has become financially impaired or insolvent, or has been abandoned by the licensee, or has been conducted in such a manner as to require or justify revocation of the licenses of that licensee, and if the Commissioner further finds that the conservation and administration of the business of the licensee would be in the public interest, he/she shall file in the Court of Chancery in the county in which the agent or broker's business is located a petition for the appointment of the Commissioner as conservator or receiver of such agent or broker's business except by leave of the court.

(b) The petition shall be verified by the Commissioner and shall set forth the facts and circumstances from which the existence of one or more of the grounds required under subsection (a) above may be determined; such petition may request that the licensee be required to show cause why the petition should not be granted.

(c) A copy of the petition, and of the order to show cause, if they are issued, shall be served upon the licensee in the same manner as provided by law of this State for service of other legal process.

(d) Upon the filing of a petition and pending a hearing upon the order to show cause, the Court may, upon good cause shown and without notice to the other party, appoint the Commissioner as temporary conservator or receiver of the agent's or broker's business.

(e) The Commissioner shall, as conservator or receiver, be authorized and empowered to conduct and administer the affairs of the agent or broker business in order to expeditiously terminate such business and, to the extent reasonably possible, to provide services and an accounting for funds to all persons previously insured and to insurers who have previously been doing business through such agent or broker. Subject to the Court's order, the Commissioner shall have the power to collect funds owed to the agent or broker

on account of insurance business transacted by him/her, and to account for and make payment of those funds to such persons as are entitled to them.

(f) The Commissioner may delegate the actual conduct and administration of the business of the agent or broker and no charges for services so rendered shall be made against the funds or assets of the agent or brokerage business except by leave of the court.

(g) Except as expressly herein provided, receivership or conservatorship shall be subject to the applicable laws of this State and to the order of any court of competent jurisdiction.

#### 1736. Countersignature.

Any statute or rule of law to the contrary notwithstanding, a nonresident agent holding a current Delaware nonresident agent license shall not be required to obtain a countersignature by a resident Delaware agent on any policy or policies of insurance effected by such nonresident agent.

#### 1737. Rules and Regulations.

The Commissioner may issue reasonable rules and regulations for the implementation and administration of this chapter.

#### 1738. Conflict With the Laws.

All statutes, parts of statutes and rules of law of this State which are inconsistent with this chapter are hereby superseded.

#### 1739. Report of Violation to Commissioner; Confidentiality of Report.

Every insurer, agent, broker, administrator, or other person except for attorneys functioning within the scope of the attorney-client privilege who has knowledge of a violation of any provision of this chapter shall promptly report the facts and circumstances pertaining to the violation to the Commissioner.

(b) If a person who submits information pursuant to subsection (a) of this section requests, the Commissioner shall keep the person's name and the information confidential.

#### 1740. Enforcement After License, Lapses or is Surrendered

The Commissioner shall retain authority to enforce the provisions of, and impose any penalty or remedy authorized by, this chapter and title against any person who is under investigation for, or charged with, a violation of this chapter and title even if, while the investigation or charges are pending, such person's license, or registration is surrendered or lapses by operation of law."

Section 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Approved July 1, 1996

CHAPTER 425  
FORMERLY  
SENATE BILL NO 460

AN ACT MAKING APPROPRIATIONS FOR THE EXPENSE OF THE STATE GOVERNMENT FOR THE FISCAL YEAR ENDING JUNE 30, 1997; SPECIFYING CERTAIN PROCEDURES, CONDITIONS AND LIMITATIONS FOR THE EXPENDITURE OF SUCH FUNDS; AND AMENDING CERTAIN PERTINENT STATUTORY PROVISIONS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. The several amounts named in this Act, or such part thereof as may be necessary and essential to the proper conduct of the business of the agencies named herein, during the fiscal year ending June 30, 1997, are hereby appropriated and authorized to be paid out of the Treasury of the State by the respective departments and divisions of State Government, and other specified spending agencies, subject to the limitations of this Act and to the provisions of Title 29, Part VI, Delaware Code, as amended or qualified by this Act, all other provisions of the Delaware Code notwithstanding. All parts or portions of the several sums appropriated by this Act which, on the last day of June 1997, shall not have been paid out of the State Treasury, shall revert to the General Fund; provided, however, that no funds shall revert which are encumbered pursuant to Title 29, Section 6521, Delaware Code

The several amounts hereby appropriated are as follows:

DEPARTMENTS

Year ending June 30, 1997

(01-00-00) LEGISLATIVE

	Personnel				S Program		S Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1								
2								
3								
4								
5				(01-01-01) General Assembly - House				
6			21.0	Personnel Costs				2,897.8
7				Travel				
8				Mileage - Legislators				50.0
9				Other - Travel				32.2
10				Contractual Services				350.3
11				Supplies and Materials				25.0
12				Capital Outlay				40.0
13				Expenses - House Members				257.0
14				House Committee Expenses				60.0
15			21.0	<b>TOTAL - General Assembly - House</b>				<b>3,712.3</b>
16								
17								
18				(01-02-01) General Assembly - Senate				
19			14.0	Personnel Costs				1,805.1
20				Travel				
21				Mileage - Legislative				38.5
22				Other - Travel				35.0
23				Contractual Services				171.4
24				Supplies and Materials				28.0
25				Capital Outlay				40.0
26				Advertising - Senate Substance Abuse Committee				50.0
27				Expenses - Senate Members				154.1
28				Senate Committee Expenses				60.0
29			14.0	<b>TOTAL - General Assembly - Senate</b>				<b>2,382.1</b>
30								
31								
32				(01-05-01) Commission on Interstate Cooperation				
33				Travel				18.0
34				Legislative Travel				100.0
35				Contractual Services				40.0
36				Contractual Services - Appalachian Compact				48.0
37				Supplies and Materials				0.5
38				Council of State Governments				61.4
39				Delaware River Basin Commission				444.0
40				National Conference of State Legislatures				73.2
41				<b>TOTAL - Commission on Interstate Cooperation</b>				<b>687.1</b>



(02-00-00) JUDICIAL

	Personnel				S Program		S Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1								
2								
3								
4								
5				<b>(02-01-00) Supreme Court</b>				
6	5.8		27.0	Personnel Costs			7.0	1,859.7
7				Travel			10.5	12.5
8				Contractual Services			21.8	101.1
9				Supplies and Materials			2.0	42.2
10				Capital/Equipment			6.5	
11				Court on the Judiciary				1.0
12	5.8		27.0	<b>TOTAL -- Supreme Court</b>			47.8	2,016.5
13								
14			27.0	(-10) Supreme Court	47.8	2,016.5		
15	5.8			(-40) Reg-Arms of the Court				
16	5.8		27.0	<b>TOTAL -- Internal Program Unit</b>	47.8	2,016.5		
17								
18								
19				<b>(02-02-00) Court of Chancery</b>				
20			24.0	Personnel Costs				1,643.2
21				Travel				9.8
22				Contractual Services				63.3
23				Supplies and Materials				26.0
24				Capital/Equipment				2.5
25			24.0	<b>TOTAL -- Court of Chancery</b>				1,744.8
26								
27			24.0	(-10) Court of Chancery		1,744.8		
28			24.0	<b>TOTAL -- Internal Program Unit</b>		1,744.8		
29								
30								
31				<b>(02-03-00) Superior Court</b>				
32	2.0		259.0	Personnel Costs				11,108.8
33				Travel				21.3
34				Contractual Services				1,329.2
35				Supplies and Materials				227.3
36				Capital/Equipment				37.0
37	2.0		259.0	<b>TOTAL -- Superior Court</b>				12,723.6
38								
39	2.0		170.0	(-10) Case Management		9,765.6		
40			89.0	(-20) Prothonotaries		2,958.0		
41	2.0		259.0	<b>TOTAL -- Internal Program Units</b>		12,723.6		
42								
43								
44				<b>(02-06-00) Court of Common Pleas</b>				
45			85.0	Personnel Costs				1,466.5
46				Travel				8.0
47				Contractual Services				124.8
48				Supplies and Materials				63.1
49				Capital/Equipment				15.5
50			85.0	<b>TOTAL -- Court of Common Pleas</b>				1,677.9
51								
52			85.0	(-10) Court of Common Pleas		3,677.9		
53			85.0	<b>TOTAL -- Internal Program Unit</b>		3,677.9		

Personnel		
NSF	ASF	GF
2.8	64.0	235.0
2.8	64.0	235.0

(02-08-00) Family Court  
 Personnel Costs  
 Travel  
 Contractual Services  
 Supplies and Materials  
 Capital/Equipment  
**TOTAL -- Family Court**

\$ Program		\$ Line Item	
ASF	GF	ASF	GF
		2,040.0	10,025.3
		12.2	13.6
		141.4	536.2
		60.1	104.1
		46.3	
		2,300.0	10,679.2

2.8	64.0	235.0
2.8	64.0	235.0

(-10) Family Court  
**TOTAL -- Internal Program Unit**

2,300.0	10,679.2
2,300.0	10,679.2

		218.0
		218.0

(02-13-00) Justices of the Peace Courts  
 Personnel Costs  
 Travel  
 Contractual Services  
 Energy  
 Supplies and Materials  
 Capital/Equipment  
 Debt Service  
**TOTAL -- Justices of the Peace Courts**

	8,392.8
	7.1
	802.7
	92.6
	100.1
	12.5
	22.5
	9,430.3

	218.0
	218.0

(-10) Justices of the Peace Courts  
**TOTAL -- Internal Program Unit**

	9,430.3
	9,430.3

	47.0
	47.0

(02-17-00) Administrative Office of the Courts - Court Services  
 Personnel Costs  
 Travel  
 Contractual Services  
 Energy  
 Supplies and Materials  
 Capital/Equipment  
 Retired Judges  
 Continuing Judicial Education  
 Debt Service  
**TOTAL -- Administrative Office of the Courts - Court Services**

	2,354.8
	18.5
	2,340.6
	18.9
	300.6
	20.9
	15.0
	51.3
	13.4
	5,134.0

	16.0
	6.0
	20.5
	4.5
	47.0

(-01) Office of the Director  
 (-03) Office of State Court Collections Enforcement  
 (-04) Judicial Information Center  
 (-05) Law Libraries  
**TOTAL -- Internal Program Units**

	2,736.4
	300.4
	1,644.2
	453.0
	5,134.0



(10-00-00) EXECUTIVE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52

Personnel		
NSF	ASF	GF
	1.0	24.0
	1.0	24.0

(10-01-01) Office of the Governor  
 Personnel Costs  
 Travel  
 Contractual Services  
 Supplies and Materials  
 Woodburn Expenses  
 Contingency-Other Expenses  
**TOTAL - Office of the Governor**

S Program		S Line Item	
ASF	GF	ASF	GF
		33.7	1,518.9
		0.5	12.0
		90.3	209.1
		0.2	21.2
			40.0
			8.7
		124.7	1,809.9

(10-02-00) Office of the Budget

Personnel Costs  
 Travel  
 Contractual Services  
 Supplies and Materials  
 Capital Outlay  
 Data Processing - Development Projects  
 Budget Automation - Operations  
 Contingency  
 Budget Commission  
 One-Time Appropriations  
 Prior Years' Obligations  
 Self Insurance  
 Legal Fees  
 Transition  
 Deseg Districting  
 Technology Fund  
 Contingency - S.B. 354/355  
 Federal Contingency  
 Maintenance Reviews  
 Selective Market  
 Family Services Cabinet Council  
 Compensation Commission  
 Personnel Costs - Salary Shortage  
 Salary Contingency - Hazard Duty  
 Salary Contingency - Overtime  
 Appropriated Special Funds  
 Debt Service  
**TOTAL - Office of the Budget**

400.0	2,199.4
5.9	37.9
682.5	1,965.2
9.5	31.7
	10.0
	2,000.0
	50.0
	100.0
	33,523.5
	400.0
	2,400.0
	1,400.0
	150.0
	15.0
	6,300.0
	80.0
	5,000.0
	532.2
	52.2
	50.0
	300.0
	400.0
	210.0
	305.8
20,000.0	
	666.7
21,097.9	58,179.5

0.0	8.0	31.0
	8.0	26.0
0.0		5.0
0.0	8.0	31.0

(-01) Office of the Budget  
 Administration  
 (-04) Contingency and One-Time  
 Items  
 (-06) Budget Commission  
 (-07) Delaware Higher Education  
 Commission  
**TOTAL -- Internal Program Units**

1,097.9	5,045.4
20,000.0	51,118.6
	100.0
	1,915.5
21,097.9	58,179.5

	Personnel			\$ Program		\$ Line Item	
	NSF	ASF	GF	ASF	GF	ASF	GF
1							
2							
3							
4							
5			11.0				624.5
6							6.0
7							3.1
8							38.9
9							3.6
10							2.0
11							165.3
12			11.0				873.4
13							
14							
15			8.0				327.6
16							23.0
17							523.1
18							9.0
19							2.0
20							0.5
21							0.8
22							0.8
23			8.0				886.8
24							
25							
26		4.0	33.0			188.6	1,735.5
27						20.0	51.0
28						425.3	833.0
29						1.5	
30						10.0	23.0
31						10.0	
32							160.9
33							65.6
34						700.0	
35							150.0
36							65.0
37							2,783.3
38		4.0	33.0				
39						1,355.4	5,867.3

	Personnel				S Program		S Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1								
2								
3				<b>(10-03-04) State Housing Authority</b>				
4	71	55.9		Personnel Costs			2,386.9	
5				Travel			40.0	
6				Contractual Services			805.1	
7				Energy			28.0	
8				Supplies and Materials			184.8	
9				Capital Outlay			97.0	
10				Holly Square			90.0	
11				Huling Cove			90.0	
12				Huling Cove Annex			135.0	
13				Housing Development Fund			29,800.0	
14				Public Housing			350.8	
15				Home Improvement Insurance			1,400.0	
16				Debt Service				390.0
17	71	55.9		TOTAL -- State Housing Authority			35,407.6	390.0
18								
19	71	59.9	52.0	<b>TOTAL -- Delaware Economic Development Office</b>			36,763.0	8,017.5
20								
21								
22				<b>(10-04-00) Office of State Personnel</b>				
23	17	71.0	48.3	Personnel Costs			3,041.6	1,742.8
24				Travel			42.1	20.9
25				Contractual Services			9,905.8	925.2
26				Supplies and Materials			81.5	46.6
27				Capital/Equipment			64.5	14.1
28				Generic Aides/Handicapped Employees				267.7
29				Employee Recognition				19.6
30				Georgetown Office				15.0
31				Blue Collar			140.0	
32				Workers' Compensation			12,742.9	
33				Health Insurance-Retirees in Closed State				
34				Police Plan				2,029.1
35				Pensions - Paraplegic Veterans				15.6
36				Pensions - Imaging			75.0	
37				Debt Service				187.5
38	17	71.0	48.3	<b>TOTAL -- Office of State Personnel</b>			26,093.4	5,284.1
39								
40	17	16.0	45.3	(-02) Operations	852.7	1,886.5		
41		2.0	3.0	(-04) Staff Development and Training	320.7	306.1		
42		3.0		(-05) Insurance Coverage Office	12,742.9	779.4		
43		50.0		(-06) Pensions	12,177.1	2,312.1		
44	17	71.0	48.3	<b>TOTAL -- Internal Program Units</b>	26,093.4	5,284.1		





(12-00-00) OTHER ELECTIVE OFFICES

	Personnel				S Program		S Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1								
2								
3								
4								
5				<b>(12-01-01) Lieutenant Governor</b>				
6			6.0	Personnel Costs				275.9
7				Travel				6.3
8				Contractual Services				25.8
9				Supplies and Materials				2.3
10				Expenses - Lieutenant Governor				7.7
11			6.0	<b>TOTAL -- Lieutenant Governor</b>				318.0
12								
13								
14				<b>(12-02-01) Auditor of Accounts</b>				
15		16.0	35.0	Personnel Costs		648.9	1,846.6	
16				Travel		3.7	6.9	
17				Contractual Services		947.5	274.2	
18				Supplies and Materials		16.3	12.6	
19				Capital Outlay		6.8	4.5	
20		16.0	35.0	<b>TOTAL -- Auditor of Accounts</b>		1,623.2	2,144.8	
21								
22								
23				<b>(12-03-00) Insurance Commissioner</b>				
24				(12-03-01) Regulatory Activities				
25		8.0	16.0	Personnel Costs		374.6	691.0	
26				Travel		17.4	3.5	
27				Contractual Services		105.3	154.3	
28				Supplies and Materials		2.0	2.4	
29				Malpractice Review			5.4	
30		8.0	16.0	<b>TOTAL -- Regulatory Activities</b>		499.3	856.6	
31								
32				(12-03-02) Bureau of Examination, Rehabilitation and Guaranty				
33				Personnel Costs		1,852.1		
34	1.0	40.0		Travel		72.0		
35				Contractual Services		606.4		
36				Supplies and Materials		26.2		
37				Capital Outlay		160.0		
38				Arbitration Program		30.0		
39				Contract Examiners		10,000.0		
40				<b>TOTAL -- Bureau of Examination, Rehabilitation and Guaranty</b>		12,746.7		
41								
42	1.0	40.0						
43								
44	1.0	48.0	16.0	<b>TOTAL -- Insurance Commissioner</b>		13,246.0	856.6	







1	Personnel				S Program		S Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
2				(20-06-00) Historical and Cultural Affairs				
3				Personnel Costs			289.6	2,607.5
4	4.8	7.4	65.8	Travel			3.6	8.1
5				Contractual Services			50.7	302.9
6				Energy				147.0
7				Supplies and Materials			24.8	143.2
8				Capital/Equipment			2.5	25.7
9				Delaware Heritage Commission				85.0
10				Archival Grants			60.0	
11				Other Items:				
12				Museum Marketing			3.0	
13				Museum Operations			15.0	
14				Museum Gift Shops			42.5	
15				Museum Grounds			4.0	
16				Museum Education			1.0	
17				Museum Exhibits			10.0	
18				Dayett Mills			4.5	
19				Conference Center Operations			71.5	
20				Conference Center Grounds			5.0	
21				Debt Service				634.4
22	4.8	7.4	65.8	<b>TOTAL -- Historical and Cultural Affairs</b>			587.7	3,953.8
23								
24			5.0	(-01) Office of Administration		404.5		
25		6.0	27.0	(-02) Delaware State Archives	369.8	1,246.5		
26	4.8	0.4	2.8	(-03) Delaware State Historic Preservation Office		17.0	160.6	
27		1.0	31.0	(-04) Delaware State Museums	200.9	2,142.2		
28	4.8	7.4	65.8	<b>TOTAL -- Internal Program Units</b>	587.7	3,953.8		
29								
30								
31								
32				(20-07-00) Arts				
33				Personnel Costs				228.2
34	3.0		5.8	Travel				3.6
35				Contractual Services				70.3
36				Supplies and Materials				3.5
37				Delaware Art				1,000.0
38				Art for the Disadvantaged				10.0
39				<b>TOTAL -- Arts</b>				1,315.6
40	3.0		5.8					
41								
42	3.0		5.8	(-01) Office of the Director		1,315.6		
43	3.0		5.8	<b>TOTAL -- Internal Program Unit</b>		1,315.6		

Year ending June 30, 1997

Personnel		
NSF	ASF	GF

9.0		10.0
9.0		10.0

9.0		10.0
9.0		10.0

	43.0	
	43.0	

	43.0	
	43.0	

17.8	108.9	135.1
------	-------	-------

**(20-08-00) Libraries**  
 Personnel Costs  
 Travel  
 Contractual Services  
 Energy  
 Supplies and Materials  
 Capital/Equipment  
 Library Standards  
 Delaware Electronic Library  
 Debt Service  
**TOTAL -- Libraries**

(-01) Libraries  
**TOTAL -- Internal Program Unit**

**(20-15-00) State Banking Commission**  
 Personnel Costs  
 Travel  
 Contractual Services  
 Supplies and Materials  
 Capital/Equipment  
 Revenue Refund  
**TOTAL -- State Banking Commission**

(-01) State Banking Commission  
**TOTAL -- Internal Program Unit**

**TOTAL -- DEPARTMENT OF STATE**

S Program		S Line Item	
ASF	GF	ASF	GF

			413.6
			1.0
			106.0
			17.8
			46.0
			7.0
			1,271.6
			97.0
			255.8
			2,215.8

	2,215.8
	2,215.8

	1,995.4
	45.1
	456.1
	30.8
	85.2
	2.0
	2,614.6

2,614.6	
2,614.6	

9,105.2	10,267.2
---------	----------

(25-00-00) DEPARTMENT OF FINANCE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43

**Personnel**

NSF	ASF	GF
		16.0
		16.0

**(25-01-00) Office of the Secretary**

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
Information Systems Development

**TOTAL -- Office of the Secretary**

		16.0
		16.0

(-01) Office of the Secretary  
TOTAL -- Internal Program Unit

**S Program      S Line Item**

ASF	GF	ASF	GF
			983.7
			12.0
			168.0
			14.0
			6.0
		550.0	
		550.0	1,183.7

550.0	1,183.7
550.0	1,183.7

**(25-05-00) Accounting**

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
State Accounting Course

**TOTAL -- Accounting**

		41.0
		41.0

(-01) Accounting  
TOTAL -- Internal Program Unit

	2,463.3
	2,463.3

		208.0
		208.0

**(25-06-00) Revenue**

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Escheat  
Debt Service

**TOTAL -- Revenue**

		208.0
		208.0

(-01) Revenue  
TOTAL -- Internal Program Unit

			8,691.7
			49.7
	945.5		1,617.2
			2.2
			139.9
			50.5
	195.0		196.0
	1,140.5		10,747.2

1,140.5	10,747.2
1,140.5	10,747.2

Year ending June 30, 1997

Personnel			S Program		S Line Item	
NSF	ASF	GF	ASF	GF	ASF	GF
	27.0				1,182.4	
					27.0	
					35,067.7	
					47.9	
					62.0	
	27.0				36,387.0	
	27.0		36,387.0			
	27.0		36,387.0			
	27.0	265.0			38,077.5	14,394.2

(25-07-00) State Lottery Office  
 Personnel Costs  
 Travel  
 Contractual Services  
 Supplies and Materials  
 Capital/Equipment  
**TOTAL - State Lottery Office**  
 (-01) State Lottery Office  
**TOTAL - Internal Program Unit**

**TOTAL - DEPARTMENT OF FINANCE**

(30-00-00) DEPARTMENT OF ADMINISTRATIVE SERVICES

	Personnel				S Program		S Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1	<b>(30-01-00) Administration</b>							
2								
3								
4	3.0	1.0	21.0	Personnel Costs			43.9	1,158.4
5				Travel			1.0	13.4
6				Contractual Services			2.5	183.4
7				Supplies and Materials			2.0	24.7
8				Capital/Equipment			21.2	179.5
9				Payment in Lieu of Taxes				65.0
10				Debt Service				1.2
11	3.0	1.0	21.0	<b>TOTAL -- Administration</b>			70.6	1,625.6
12								
13		1.0	13.0	(-10) Administration	70.6	959.3		
14	3.0		1.0	(-20) Office of Disability Affairs		74.7		
15			2.0	(-30) Public Integrity Commission		153.7		
16			4.0	(-40) Public Employee Relations Board		298.8		
17			1.0	(-50) Merit Employee Relations Board		139.1		
18	3.0	1.0	21.0	<b>TOTAL -- Internal Program Units</b>	70.6	1,625.6		
19								
20	<b>(30-03-00) Regulation and Licensing</b>							
21								
22		52.0		Personnel Costs			2,778.4	
23				Travel			105.9	
24				Contractual Services			1,895.0	
25				Supplies and Materials			53.5	
26				Capital/Equipment			57.1	
27				Real Estate Guaranty Fund			10.0	
28				Examination Costs			75.0	
29				Revenue Refunds			354.0	
30				Motor Vehicle Franchise Fund			18.9	
31		52.0		<b>TOTAL -- Regulation and Licensing</b>			5,347.8	
32								
33		23.0		(-20) Professional Regulation	1,916.5			
34		25.0		(-30) Public Service Commission	3,032.9			
35		4.0		(-50) Public Advocate	398.4			
36		52.0		<b>TOTAL -- Internal Program Units</b>	5,347.8			
37								
38	<b>(30-04-00) Support Operations</b>							
39								
40		43.0	21.5	Personnel Costs	1,581.6	332.2	1,705.9	592.0
41				Travel	9,348.8	361.3	18.4	
42				Contractual Services	2,271.3		12,058.0	83.8
43				Energy	4,928.8		12.9	4.3
44				Supplies and Materials			1,154.6	13.4
45				Capital/Equipment			2,644.8	
46				Gas Card Expense			535.9	
47		43.0	21.5	<b>TOTAL -- Support Operations</b>	18,130.5	693.5	18,130.5	693.5
48								
49			10.0	(-10) Mail/Courier Services				
50			11.5	(-20) Telephone Services				
51		18.0		(-30) Graphics and Printing				
52		25.0		(-40) Fleet Management				
53		43.0	21.5	<b>TOTAL -- Internal Program Units</b>	18,130.5	693.5		

Year ending June 30, 1997

Personnel			S Program		S Line Item	
NSF	ASF	GF	ASF	GF	ASF	GF
			<b>(30-05-00) Facilities Management</b>			
2.6	4.0	81.4			143.3	2,932.5
					4.5	
					479.4	2,503.5
						2,373.0
					137.0	258.9
					109.6	
					182.9	
						29.2
						800.0
						150.0
						10,341.7
2.6	4.0	81.4	<b>TOTAL -- Facilities Management</b>		1,056.7	19,348.8
2.6	4.0	81.4	(-10) Facilities Management		1,056.7	19,348.8
2.6	4.0	81.4	<b>TOTAL -- Internal Program Units</b>		1,056.7	19,348.8
			<b>(30-06-00) Purchasing</b>			
2.0	10.0	18.0			383.1	770.1
					10.1	4.5
					90.3	54.5
					15.7	22.5
					124.7	25.1
					240.1	1.7
					112.0	
2.0	10.0	18.0	<b>TOTAL -- Purchasing</b>		976.0	878.4
		14.0	(-10) Contracting		100.0	696.2
	4.0		(-20) Surplus Property		383.1	
2.0	6.0	4.0	(-30) Food Distribution		492.9	182.2
2.0	10.0	18.0	<b>TOTAL -- Internal Program Units</b>		976.0	878.4
			<b>TOTAL -- DEPARTMENT OF ADMINISTRATIVE SERVICES</b>			
7.6	110.0	141.9			25,581.6	22,546.3

(35-00-00) DEPARTMENT OF HEALTH AND SOCIAL SERVICES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37

**Personnel**

NSF	ASF	GF
62.8	28.6	144.1
62.8	28.6	144.1

**(35-01-00) Administration**

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Other Items:  
    Revenue Management  
    Health Statistics  
    Program Integrity  
    Nurse Recruitment  
    EBT  
    Debt Service

**TOTAL -- Administration**

(-10) Office of the Secretary  
(-20) Management Services

**TOTAL -- Internal Program Units**

		7.0
62.8	28.6	137.1
62.8	28.6	144.1

**S Program**

**S Line Item**

S Program		S Line Item	
ASF	GF	ASF	GF
		720.6	6,572.2
		14.8	6.4
		399.5	934.2
			40.2
		46.3	34.9
		82.6	40.4
		255.0	
		173.8	
		25.0	
			20.0
			110.9
			2,101.8
		1,717.6	9,861.0

42.4	477.5
1,675.2	9,383.5
1,717.6	9,861.0

**(35-04-00) Medical Examiner**

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Debt Service

**TOTAL -- Medical Examiner**

(-01) Medical Examiner

**TOTAL -- Internal Program Unit**

		35.0
		35.0

	1,961.9
	11.5
	194.8
	56.3
	245.9
	38.6
	341.0
	2,850.0

	35.0
	35.0

	2,850.0
	2,850.0



Personnel		
NSF	ASF	GF

30.8	4.0	862.4
30.8	4.0	862.4

13.0		19.0
4.0		130.5
0.8	1.0	687.9
13.0	3.0	25.0
30.8	4.0	862.4

311.5	2.0	286.4
311.5	2.0	286.4

311.5	2.0	286.4
311.5	2.0	286.4

**(35-06-00) Alcoholism, Drug Abuse and Mental Health**

	S Program		S Line Item	
	ASF	GF	ASF	GF
Personnel Costs			149.2	31,834.8
Travel				12.9
Contractual Services			6,465.4	19,004.7
Energy				1,027.5
Supplies and Materials			100.6	2,930.6
Capital/Equipment			9.0	129.0
Other Items:				
SENTAC Treatment Initiatives				630.0
Gambler's Addiction Program				120.0
Sheltered Workshop				9.9
Debt Service				718.6
<b>TOTAL -- Alcoholism, Drug Abuse and Mental Health</b>			<b>6,724.2</b>	<b>56,418.0</b>

(-10) Administration - Mental Health	60.0	1,316.4
(-20) Community Mental Health	6,046.0	15,107.4
(-30) Inpatient Mental Health	62.3	31,897.1
(-40) Alcoholism & Drug Abuse	555.9	8,097.1
<b>TOTAL -- Internal Program Units</b>	<b>6,724.2</b>	<b>56,418.0</b>

**(35-07-00) Social Services**

	S Program		S Line Item	
	ASF	GF	ASF	GF
Personnel Costs			2.0	10,887.0
Travel				13.9
Contractual Services				3,973.2
Energy				41.1
Supplies and Materials				82.9
Capital/Equipment				99.6
Other Items:				
Cost Recovery			149.5	
Early Intervention				1,539.2
General Assistance				3,206.1
AFDC				17,830.1
SSI Supplement				1,016.0
Child Care				16,491.5
Emergency Assistance				798.9
First Step				3,735.9
Medicaid - State				25,654.8
Medicaid - Non-State			14,500.0	158,304.9
Renal				608.8
<b>TOTAL -- Social Services</b>			<b>14,651.5</b>	<b>244,283.9</b>

(-01) Social Services	14,651.5	244,283.9
<b>TOTAL -- Internal Program Unit</b>	<b>14,651.5</b>	<b>244,283.9</b>

Personnel		
NSF	ASF	GF
29.6	3.0	28.4
29.6	3.0	28.4

**(35-08-00) Visually Impaired**

Personnel Costs  
 Travel  
 Contractual Services  
 Energy  
 Supplies and Materials  
 Capital/Equipment  
 Business Enterprise Program

**TOTAL -- Visually Impaired**

29.6	3.0	28.4
29.6	3.0	28.4

(-01) Visually Impaired Services  
 TOTAL -- Internal Program Unit

S Program		S Line Item	
ASF	GF	ASF	GF
		90.5	1,309.9
			2.8
		0.5	427.9
			40.8
			49.3
		4.0	29.1
		850.0	
		945.0	1,859.8
945.0	1,859.8		
945.0	1,859.8		

117.6	17.4	42.5
117.6	17.4	42.5

**(35-10-00) Child Support Enforcement**

Personnel Costs  
 Travel  
 Contractual Services  
 Energy  
 Supplies and Materials  
 Capital/Equipment

**TOTAL -- Child Support Enforcement**

117.6	17.4	42.5
117.6	17.4	42.5

(-01) Child Support Enforcement  
 TOTAL -- Internal Program Unit

		576.5	1,508.3
		3.7	4.8
		541.1	606.9
			9.0
		40.0	12.4
		5.0	2.1
		1,166.3	2,143.5
1,166.3	2,143.5		
1,166.3	2,143.5		

3.0		866.8
3.0		866.8

**(35-11-00) Mental Retardation**

Personnel Costs  
 Travel  
 Contractual Services  
 Energy  
 Supplies and Materials  
 Capital/Equipment  
 Other Items:  
     Music Stipends  
     Purchase of Care  
     Purchase of Community Services  
     Wheelchairs  
     Debt Service

**TOTAL -- Mental Retardation**

3.0		27.0
		700.0
		139.8
3.0		866.8

(-10) Administration - Mental Retardation  
 (-20) Institutional Services  
 (-30) Community Services  
 TOTAL -- Internal Program Units

			28,588.7
			7.3
		1,060.0	4,708.6
			610.7
			1,378.1
			137.6
			9.6
			12,368.1
			3,961.3
		60.0	
			20.1
		1,120.0	51,790.1
		1,417.1	
60.0		27,273.5	
1,060.0		23,099.5	
1,120.0		51,790.1	

Personnel		
NSF	ASF	GF

39.5		78.1
39.5		78.1

**(35-12-00) State Service Centers**

- Personnel Costs
- Travel
- Contractual Services
- Energy
- Supplies and Materials
- Capital/Equipment
- Family Support
- Kent County RSVP
- Community Food Program
- Emergency Assistance
- Hispanic Affairs
- Debt Service

S Program		S Line Item	
ASF	GF	ASF	GF

		2.0	3,072.4
		7.8	8.0
		1,143.7	1,921.8
		54.2	461.6
		70.1	88.1
		39.8	17.3
			14.8
			29.4
			85.5
			647.0
			25.0
			72.6
		1,317.6	6,443.5

**TOTAL -- State Service Centers**

27.8		38.4
11.0		2.0
0.7		18.2
39.5		78.1

- (-10) Family Support
- (-20) Service Center Management
- (-30) Community Services
- (-40) Volunteer Services

	1,777.0
1,317.4	2,304.5
	892.2
0.2	1,469.8
1,317.6	6,443.5

**TOTAL -- Internal Program Units**

**(35-14-00) Services for Aging and Adults with Physical Disabilities**

42.4		53.8
42.4		53.8

- Personnel Costs
- Travel
- Contractual Services
- Energy
- Supplies and Materials
- Capital/Equipment
- Nutrition Program
- Long Term Care

	0.1	2,182.1
	170.9	3,291.3
		7.1
		40.7
		0.6
		466.1
		249.1
	171.0	6,242.8

**TOTAL -- Services for Aging and Adults with Physical Disabilities**

42.4		53.8
42.4		53.8

- (-01) Services for Aging and Adults with Physical Disabilities

171.0	6,242.8
171.0	6,242.8

**TOTAL -- Internal Program Unit**

**TOTAL -- DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

843.2	85.3	3,723.3
-------	------	---------

32,290.3	442,871.7
----------	-----------

(37-00-00) DEPARTMENT OF SERVICES FOR CHILDREN,  
YOUTH AND THEIR FAMILIES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49

Personnel		
NSF	ASF	GF
19.6	26.5	111.7
19.6	26.5	111.7

(37-01-00) Management Services

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
Other Items:  
    MIS Development  
    Indirect Costs  
    Services Integration  
Debt Service

S Program		S Line Item	
ASF	GF	ASF	GF
		1,273.6	6,096.8
		15.4	10.0
		674.2	568.5
		57.3	79.8
		7.0	39.6
			362.3
		187.0	
		200.0	
			435.8
		2,414.5	7,592.8

TOTAL -- Management Services

	5.0	4.0
7.8	7.5	16.2
1.0	4.0	11.0
1.0		13.0
	6.0	56.0
9.8	4.0	5.5
19.6	26.5	111.7

(-10) Office of the Secretary  
(-15) Office of the Director  
(-20) Fiscal Services  
(-25) Planning and Evaluation  
(-30) Human Resources  
(-40) Education Services  
(-50) Management Information Systems  
TOTAL -- Internal Program Units

208.6	463.3
778.5	812.6
327.2	798.1
378.6	473.8
60.0	835.9
380.3	3,467.1
281.3	742.0
2,414.5	7,592.8

(37-02-00) Family Services

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
Child Welfare/Contractual Services  
Other Items:  
    Emergency Material Assistance  
    DFS Decentralization

43.8	24.0	281.5
43.8	24.0	281.5

TOTAL -- Family Services

1,011.6	11,101.1
3.9	5.7
1,814.1	2,243.7
13.8	61.9
	29.3
215.0	5,891.9
	30.0
283.3	
3,341.7	19,363.6

15.8		42.5
	11.0	52.0
1.0		85.4
5.0	12.0	56.7
		14.9
4.5		10.5
8.0		7.0
9.5	1.0	12.5
43.8	24.0	281.5

(-10) Office of the Director  
(-20) Report And Initial Assessment  
(-30) Protective Treatment  
(-40) Intensive Protective Services  
(-50) Adoption Services  
(-60) Office of Case Management  
(-70) Office of Prevention  
(-80) Office of Child Care Licensing  
TOTAL -- Internal Program Units

608.5	2,375.2
796.7	2,472.2
235.0	3,492.4
1,501.6	7,326.9
50.0	1,367.6
	475.0
100.0	1,111.6
49.9	742.7
3,341.7	19,363.6

Personnel			S Program		S Line Item	
NSF	ASF	GF	ASF	GF	ASF	GF
			<b>(37-03-00) Child Mental Health Services</b>			
0.8	16.0	183.1			821.1	8,816.0
					7.5	14.8
					3,458.7	12,743.2
						165.7
					59.4	259.6
					8.3	38.5
					31.0	
0.8	16.0	183.1	<b>TOTAL -- Child Mental Health Services</b>		4,386.0	22,037.8
0.8	11.0	34.6	(-10) Clinical/Administrative Office	614.0	2,130.9	
	2.0	24.0	(-15) Consultation & Assessment Services	172.1	1,264.4	
	3.0	13.0	(-20) Terry Outpatient Treatment	240.0	825.6	
		19.0	(-30) Terry Day Hospital Treatment		1,098.6	
		42.0	(-40) Terry Inpatient Treatment	33.0	2,420.6	
		1.0	(-50) Outpatient Treatment	1,100.0	2,321.2	
		45.5	(-60) Residential Treatment	126.9	7,120.8	
		2.0	(-70) Adolescent Hospital Treatment	1,700.0	3,646.6	
		2.0	(-80) Alcohol and Drug Treatment Services	400.0	1,209.1	
0.8	16.0	183.1	<b>TOTAL -- Internal Program Units</b>		4,386.0	22,037.8
			<b>(37-05-00) Youth Rehabilitative Services</b>			
0.8	11.0	259.1	Personnel Costs		486.9	10,599.1
			Travel		9.7	21.3
			Contractual Services		4,438.5	10,272.2
			Energy			553.2
			Supplies and Materials		201.1	716.1
			Capital/Equipment			24.4
			Debt Service			3.7
0.8	11.0	259.1	<b>TOTAL -- Youth Rehabilitative Services</b>		5,136.2	22,190.0
0.8		8.6	(-10) Office of the Director	1.0	393.9	
		61.5	(-30) Community Services	3,602.5	11,800.3	
	11.0	189.0	(-50) Secure Care	1,532.7	9,995.8	
0.8	11.0	259.1	<b>TOTAL -- Internal Program Units</b>		5,136.2	22,190.0
			<b>TOTAL -- DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES</b>			
65.0	77.5	835.4			15,278.4	71,184.2

(38-00-00) DEPARTMENT OF CORRECTION

	Personnel			S Program		S Line Item	
	NSF	ASF	GF	ASF	GF	ASF	GF
5							
6		0 0	180 0			0 0	7,598 4
7						0 0	18 2
8						25 0	1,869 6
9						0 0	41 0
10						0 0	5,199 6
11						0 0	33 4
12							9,315 0
13							80 0
14							15 4
15							1,709 7
16							113 0
17							362 5
18			180 0			25 0	26,355 8
19							
20			12 0		25 0	1,102 6	
21			41 0			1,862 1	
22			42 0			2,755 9	
23			41 0			6,643 6	
24						9,395 0	
25			44 0			4,596 6	
26			180 0		25 0	26,355 8	
27							
28							
29							
30	13 0	1,163 0				495 9	47,208 1
31						9 0	11 2
32						625 0	3,044 4
33						5 2	2,300 6
34						1,203 0	2,078 5
35						177 0	
36							14 0
37							11 5
38						250 0	
39							9,158 4
40	13 0	1,163 0				2,765 1	63,826 7
41							
42			8 0			796 0	
43			26 0		1 0	1,583 7	
44			426 0		1 0	19,736 5	
45			202 0			9,467 0	
46			87 0		1 0	6,633 8	
47							
48			312 0		1 0	19,600 5	
49							
50			26 0		4 0	1,224 2	
51			37 0			2,518 8	
52			8 0			1,646 9	644 9
53			5 0			1,109 2	251 4
54			21 0			1 0	1,369 9
55							
56	13 0	1,163 0			2,765 1	63,826 7	

	Personnel				S Program		S Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1								
2				(38-06-00) Community Corrections				
3								
4								
5			339.0	Personnel Costs				13,245.6
6				Travel				11.9
7				Contractual Services			26.0	2,811.9
8				Energy				142.4
9				Supplies and Materials			25.0	109.2
10				Capital/Equipment				15.1
11				Debt Service				33.5
12			339.0	<b>TOTAL - Community Corrections</b>			51.0	16,433.8
13								
14								
15			10.0	(-01) Bureau Chief - Community		1,466.8		
16				Corrections				
17			239.0	(-02) Probation and Parole		10,391.6		
18			26.0	(-04) House Arrest		1,196.5		
19			33.0	(-06) Plummer Work Release Center	1.0	2,044.9		
20			31.0	(-07) Sussex Work Release Center	50.0	1,334.0		
21			339.0	<b>TOTAL -- Internal Program Units</b>	51.0	16,433.8		
22								
23								
24				<b>TOTAL - DEPARTMENT OF</b>				
25			13.0	<b>CORRECTION</b>			2,841.1	106,616.3

(40-00-00) DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

	Personnel				S Program		S Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
				(40-01-00) Department Management				
	20	183	287	Personnel Costs			650.1	1,652.2
				Travel			5.9	20.6
				Contractual Services			101.8	169.5
				Energy			35.0	269.4
				Supplies and Materials			67.8	36.5
				Capital/Equipment			7.2	7.0
				Coastal Zone Management			25.0	
				Non-Game Habitat			20.0	
				Special Projects			15.0	
				Outdoor Delaware			65.0	70.0
				Debt Service				838.4
	20	183	287	<b>TOTAL -- Department Management</b>			992.8	3,063.6
	10	163	267	(-01) Department Management	906.5	2,913.4		
	10	20	20	(-02) Business and Permitting Services	86.3	150.2		
	20	183	287	<b>TOTAL -- Internal Program Unit</b>	992.8	3,063.6		
				(40-05-00) Fish and Wildlife				
	25.2	32.8	63.0	Personnel Costs			1,165.0	2,853.4
				Travel			17.2	11.8
				Contractual Services			498.8	893.1
				Energy			1.5	63.1
				Supplies and Materials			183.9	291.7
				Capital/Equipment			879.0	
				Spraying and Insecticides				393.6
				Non-Game Habitat			50.0	
				Natural Heritage Program			150.0	150.0
				Clean Vessel Program			32.4	
				Duck Stamp			180.0	
				Trout Stamp			30.0	
				Fish Development			130.0	
				Fisheries Restoration			310.0	
				Northern Delaware Wetlands			280.0	
				Other Items			4.1	
				Debt Service				176.2
	25.2	32.8	63.0	<b>TOTAL -- Fish and Wildlife</b>			3,911.9	4,832.9
		10	15	(-01) Management and Support - Fish and Wildlife	120.6	178.2		
	22.2	29.8	16.5	(-02) Wildlife/Fisheries	3,083.9	1,402.2		
			18.0	(-04) Mosquito Control	313.6	1,352.5		
				(-05) Dog Control	82.0	582.0		
	3.0	2.0	27.0	(-06) Fish and Wildlife Enforcement	311.8	1,318.0		
	25.2	32.8	63.0	<b>TOTAL -- Internal Program Units</b>	3,911.9	4,832.9		

Personnel			S Program		S Line Item	
NSF	ASF	GF	ASF	GF	ASF	GF
			<b>(40-06-00) Parks and Recreation</b>			
1.0	60.5	75.5			3,533.0	3,015.1
					20.8	
					849.2	25.7
					20.9	264.0
					642.6	16.7
					525.1	
					812.6	5.0
						2,096.6
1.0	60.5	75.5	<b>TOTAL -- Parks and Recreation</b>			
					6,404.2	5,423.1
	6.0	6.0	<b>(-01) Management and Support -</b>			
			<b>Parks and Recreation</b>			
	39.5	47.5	<b>(-02) Operations and Maintenance</b>			
1.0	9.0	8.0	4,546.0	2,354.1		
	6.0	14.0	<b>(-03) Cultural and Recreational Services</b>			
			<b>(-04) Planning, Preservation and</b>			
			<b>Development</b>			
1.0	60.5	75.5	712.8	2,422.9		
			<b>TOTAL -- Internal Program Units</b>			
			6,404.2	5,423.1		
			<b>(40-07-00) Soil and Water Conservation</b>			
12.5		47.5			7.6	2,245.0
					5.0	5.8
					1,609.7	600.9
						29.2
					29.6	201.6
					39.0	
						225.0
					850.0	
					150.0	
						225.0
						955.1
12.5		47.5	<b>TOTAL -- Soil and Water Conservation</b>			
					2,690.9	4,487.6
1.5		4.5	<b>(-01) Management and Support -</b>			
			<b>Soil and Water</b>			
		9.0	<b>(-02) Drainage</b>			
		27.0	<b>(-03) Shoreline and Waterway</b>			
			<b>Management</b>			
2.0		7.0	<b>(-04) District Operations</b>			
9.0			25.6	839.6		
			10.0	13.1		
12.5		47.5	<b>TOTAL -- Internal Program Units</b>			
			2,690.9	4,487.6		

\*Pursuant to Section 3921, Title 7, Delaware Code

Year ending June 30, 1997

	Personnel			S Program		S Line Item	
	NSF	ASF	GF	ASF	GF	ASF	GF
1							
2							
3							
4	31.7	67.0	69.3				
5						1,818.5	1,447.0
6						32.0	41.1
7						511.0	948.5
8							11.6
9						190.3	104.9
10						35.0	45.0
11							103.3
12							50.0
13						10.0	0.0
14							88.0
15	31.7	67.0	69.3			2,596.8	3,429.2
16							8,268.6
17	9.8	5.0	15.2	361.9	4,483.2		
18							
19	2.0	33.0	16.0	1,026.6	947.9		
20	5.2	9.0	6.8	385.9	461.2		
21		15.0	4.0	517.7	228.8		
22		3.0	8.0	138.6	417.9		
23	8.7	14.3	14.3		1,389.9		
24	2.0	2.0	5.0	166.1	339.7		
25	31.7	67.0	69.3	2,596.8	8,268.6		
26							
27							
28							
29							
30							
31	62.6	92.4	50.0			3,033.1	2,746.4
32						32.0	12.8
33						455.3	249.5
34							46.4
35						104.5	92.4
36						189.2	18.1
37						250.0	
38						470.9	
39						5,249.4	
40						30.0	14.4
41						300.0	
42						350.0	
43							200.0
44						86.8	
45							155.4
46	62.6	92.4	50.0	10,551.2	3,535.4		
47							
48	2.7	11.0	16.3	1,608.6	986.3		
49							
50	17.9	50.1	17.0	2,771.3	1,144.9		
51	42.0	31.3	16.7	6,171.3	1,404.2		
52	62.6	92.4	50.0	10,551.2	3,535.4		
53							
54							
55							
56							
57	135.0	271.0	334.0			27,147.8	29,611.2

**TOTAL -- DEPARTMENT OF  
NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**

(45-00-00) DEPARTMENT OF PUBLIC SAFETY									
	Personnel			S Program		S Line Item			
	NSF	ASF	GF	ASF	GF	ASF	GF		
1									
2									
3									
4									
5									
6	28.1	1.0	52.4						
7									
8									
9									
10									
11									
12									
13									
14									
15									
16	28.1	1.0	52.4						
17									
18			14.0	100.0	917.5				
19			5.0		234.9				
20		1.0	23.0	200.7	959.2				
21	23.0		7.4		384.1				
22	4.5		3.0		156.9				
23	28.1	1.0	52.4	300.7	2,672.6				
24									
25									
26									
27	2.7		27.3						
28									
29									
30									
31									
32	2.7		27.3						
33									
34	2.7		27.3		1,442.7				
35	2.7		27.3		1,442.7				
36									
37									
38									
39		2.0	19.0						
40									
41									
42									
43									
44									
45		2.0	19.0						
46									
47									
48		2.0	19.0	74.1	896.6				
49		2.0	19.0	74.1	896.6				

Year ending June 30, 1997

	Personnel			\$ Program		\$ Line Item	
	NSF	ASF	GF	ASF	GF	ASF	GF
1							
2							
3							
4	17.8	20.9	720.3				
5						868.5	17,641.5
6						166.7	33.3
7						596.2	2,007.9
8							328.5
9						222.6	1,506.1
10						35.0	1,211.9
11							15,495.0
12							75.0
13							35.0
14	17.8	20.9	720.3			1,889.0	58,482.9
15							
16			59.0		18,998.1		
17			7.0		350.8		
18	6.0	5.4	124.0	887.2	18,919.4		
19	1.0		86.0		5,313.0		
20		6.0	39.0	349.9	2,424.3		
21			20.0		1,851.2		
22	1.2		15.8		50.0	822.1	
23		6.0	37.0	477.8	1,499.6		
24			11.6		844.8		
25		3.5	77.5	124.1	1,443.2		
26			16.0		2,613.6		
27	6.0		28.0		1,402.8		
28	17.8	20.9	720.3	1,889.0	58,482.9		
29							
30							
31							
32		12.0	200.0			451.3	6,485.7
33						4.0	10.0
34						1,088.1	588.2
35						166.7	438.7
36						439.0	0.1
37							
38						207.3	
39						104.5	
40						25.0	
41						6.0	
42						150.0	
43						1.0	
44							0.8
45		12.0	200.0			2,642.9	7,523.5
46							
47			27.0	105.5	1,347.7		
48			68.0		2,258.5		
49		12.0	105.0	2,330.1	3,917.3		
50		12.0	200.0	2,642.9	7,523.5		
51							
52							
53							
54							
55							
56	48.6	35.9	1,019.0			4,906.7	71,018.3

TOTAL -- DEPARTMENT OF PUBLIC SAFETY

(55-00-00) DEPARTMENT OF TRANSPORTATION

Personnel				S Line Item	
NSF	TFO	TFC	GF	TTF	GF
				<b>(55-01-00) Office of the Secretary</b>	
				<b>(55-01-01) Office of the Secretary</b>	
	12.0	1.0		Personnel Costs	858.4
				Operations/Capital	28.9
				Environmental Contingency	150.0
	12.0	1.0		<b>TOTAL -- Office of the Secretary</b>	<b>1,037.3</b>
				<b>(55-01-02) Office of Financial Management and Budget</b>	
1.0	33.0			Personnel Costs	1,721.5
				Operations/Capital	1,453.9
1.0	33.0			<b>TOTAL -- Office of Financial Management and Budget</b>	<b>3,175.4</b>
				<b>(55-01-03) Office of External Affairs</b>	
	9.0			Personnel Costs	481.2
				Operations/Capital	90.6
	9.0			<b>TOTAL -- Office of External Affairs</b>	<b>571.8</b>
1.0	54.0	1.0		<b>TOTAL--Office of the Secretary</b>	<b>4,784.5</b>
				<b>(55-02-00) Office of Administration</b>	
				<b>(55-02-01) Office of Administration</b>	
2.0	64.0	1.0		Personnel Costs	2,931.0
				Travel	33.0
				Contractual/Supplies	1,955.2
				Energy	346.9
				Capital Outlay	19.0
2.0	64.0	1.0		<b>TOTAL -- Office of Administration</b>	<b>5,285.1</b>
				<b>(55-02-02) Motor Fuel Tax</b>	
1.0	23.0			Personnel Costs	966.7
1.0	23.0			Operations/Capital	310.8
3.0	87.0	1.0		<b>TOTAL -- Motor Fuel Tax</b>	<b>1,277.5</b>
3.0	87.0	1.0		<b>TOTAL--Office of Administration</b>	<b>6,562.6</b>
				<b>(55-03-01) Office of Planning</b>	
	57.0	3.0		Personnel Costs	3,027.4
				Operations/Capital	527.7
	57.0	3.0		<b>TOTAL -- Office of Planning</b>	<b>3,555.1</b>

Year ending June 30, 199

1	Personnel					S Line Item	
	2 NSF	TFO	TFC	GF		TTF	GF
3							
4					<b>(55-04-00) Division of Highway Operations</b>		
5		10 0			(55-04-01) Office of the Director		
6					Personnel Costs	518 1	
7		10 0			Operations/Capital	128 0	
8					TOTAL -- Office of the Director	646 1	
9					(55-04-40) Bureau of Construction		
10		74 0	77 0		Personnel Costs	3,505 9	
11					Operations/Capital	17 0	
12		74 0	77 0		TOTAL -- Bureau of Construction	3,522 9	
13					(55-04-50) Bureau of Traffic		
14		98 0	1 0		Personnel Costs	3,925 4	
15					Energy	914 3	
16					Capital Outlay	27 0	
17					Contractual/Supplies	2,651 5	
18		98 0	1 0		TOTAL -- Bureau of Traffic	7,518 2	
19					(55-04-60) Field Services		
20		33 0	60 0		Personnel Costs	1,769 3	
21					Operations/Capital	138 1	
22		33 0	60 0		TOTAL -- Field Services	1,907 4	
23					(55-04-70) Bureau of Maintenance		
24		535 0	2 0		Personnel Costs	17,867 2	
25					Energy	470 4	
26					Capital Outlay	202 2	
27					Contractual/Supplies	7,341 6	
28					Snow/Storm Contingency	2,000 0	
29		535 0	2 0		TOTAL -- Bureau of Maintenance	27,881 4	
30					(55-04-80) Bureau of Expressways Construction		
31		1 0	7 0		Personnel Costs	84 2	
32					Operations/Capital	9 9	
33		1 0	7 0		TOTAL -- Bureau of Expressways Constructio	94 1	
34					(55-04-90) Expressways Operations/Toll		
35					Administration		
36		203 0			Personnel Costs	6,549 2	
37					Energy	448 2	
38					Capital Outlay	108 1	
39					Contractual/Supplies	3,139 1	
40					Travel	26 0	
41					Turnpike Operating Reserve *		
42		203 0			TOTAL -- Expressways Operations/Toll	10,270 6	
43					Administration		
44					*The Cumulative Turnpike Operating Reserve Fund		
45					is established at \$86-1 6		
46							
47							
48							
49		954 0	147 0		<b>TOTAL -- Division of Highway Operations</b>		
50						51,840 7	



(60-00-00) DEPARTMENT OF LABOR

	Personnel				S Program		S Line Item			
	NSF	ASF	GF		ASF	GF	ASF	GF		
5				<b>(60-01-00) Administration</b>						
6	12.5	32.5	7.0					1,318.5	363.2	
7								18.3	4.2	
8								610.6	114.2	
9								110.4	2.4	
10								47.8		
11	12.5	32.5	7.0	<b>TOTAL -- Administration</b>					2,105.6	484.0
13		12.5	1.5		814.5	211.3				
14	12.5		2.5					117.9		
16			3.0					154.8		
17		20.0								
18	12.5	32.5	7.0	<b>TOTAL -- Internal Program Units</b>					2,105.6	484.0
21				<b>(60-06-00) Unemployment Insurance</b>						
22	128.0	5.0						131.6		
23								0.4		
24								109.0		
25								1.0		
26								5.2		
27								1.0		
28								254.4		
29	128.0	5.0		<b>TOTAL -- Unemployment Insurance</b>					502.6	
31	128.0	5.0			502.6					
32	128.0	5.0		<b>TOTAL -- Internal Program Unit</b>					502.6	
35				<b>(60-07-00) Industrial Affairs</b>						
36	9.5	43.5						1,757.2		
37								28.9		
38								288.4		
39								35.8		
40								120.0		
41								7,820.0		
42	9.5	43.5		<b>TOTAL -- Division of Labor Standards</b>					10,050.3	
44	5.5	26.5			9,351.3					
45										
46	4.0	17.0			699.0					
47	9.5	43.5		<b>TOTAL -- Internal Program Units</b>					10,050.3	

	Personnel				S Program		S Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1								
2				(60-08-00) Vocational Rehabilitation				
3				Personnel Costs			215.8	52.0
4	111.2	4.8	2.0	Travel				0.3
5				Contractual Services			260.0	1,608.1
6				Supplies and Materials				39.9
7				Sheltered Workshop				310.4
8				Governor's Committee			15.0	8.0
9				<b>TOTAL -- Vocational Rehabilitation</b>			<b>490.8</b>	<b>2,018.7</b>
10	111.2	4.8	2.0					
11								
12	81.4	4.8	2.0	(-10) Vocational Rehabilitation Services	490.8	2,018.7		
13	29.8			(-20) Disability Determination Services				
14	111.2	4.8	2.0	<b>TOTAL -- Internal Program Units</b>	<b>490.8</b>	<b>2,018.7</b>		
15								
16								
17				(60-09-00) Employment and Training				
18	88.9	3.0	23.1	Personnel Costs			147.5	784.6
19				Travel			0.2	5.9
20				Contractual Services			42.4	1,128.9
21				Supplies and Materials			2.0	7.2
22				Capital/Equipment				13.0
23				Women's Vocational Services				40.0
24				Dislocated Workers' Program				16.6
25				Summer Youth Program				235.2
26				Individual Skills Grant				554.9
27				Blue Collar Projects			725.2	
28	88.9	3.0	23.1	<b>TOTAL -- Employment and Training</b>			<b>917.3</b>	<b>2,786.3</b>
29								
30	88.9	3.0	23.1	(-20) Employment & Training Services	917.3	2,786.3		
31								
32	88.9	3.0	23.1	<b>TOTAL -- Internal Program Unit</b>	<b>917.3</b>	<b>2,786.3</b>		
33								
34								
35	<b>350.1</b>	<b>88.8</b>	<b>32.1</b>	<b>TOTAL -- DEPARTMENT OF LABOR</b>			<b>14,066.6</b>	<b>5,289.0</b>

(65-00-00) DEPARTMENT OF AGRICULTURE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40

Personnel		
NSF	ASF	GF
17.0	18.5	84.5
	1.0	13.0
7.0	12.0	7.0
6.0	1.5	16.5
4.0	0.5	4.5
	3.5	13.5
		7.0
		9.0
17.0	18.5	84.5

	\$ Program		\$ Line Item	
	ASF	GF	ASF	GF
(65-01-00) Agriculture				
Personnel Costs			963.0	1,565.6
Travel			24.4	64.2
Contractual Services			234.1	583.5
Energy			7.3	96.7
Supplies and Materials			109.1	126.7
Capital/Equipment			82.0	5.0
Agriculture Development Program				23.0
Laurel Auction				9.5
Alternative Agriculture Projects				15.0
Agriculture Advertising				39.0
Cooperative Advertising				40.0
Gypsy Moth Program				282.2
Educational Assistance			10.0	
Tree Seedling Refunds			6.0	
Debt Service				18.5
<b>TOTAL -- Agriculture</b>			<b>1,435.9</b>	<b>4,868.9</b>
	191.6	832.4		
(-01) Administration	11.2	231.1		
(-02) Agriculture Compliance	599.7	340.8		
(-03) Food Products Inspection	223.5	715.5		
(-04) Forest Service	30.0	40.1		
(-05) Harness Racing Commission	15.4	194.7		
(-06) Pesticides				
(-07) Planning, Promotion and Marketing	45.6	847.8		
(-08) Plant Industries	269.9	888.4		
(-09) Poultry and Animal Health				379.8
(-10) Thoroughbred Racing Commission	49.0	50.1		
(-11) Weights and Measures		348.2		
<b>TOTAL -- Internal Program Units</b>	<b>1,435.9</b>	<b>4,868.9</b>		

**TOTAL -- DEPARTMENT OF AGRICULTURE**

17.0	18.5	84.5
------	------	------

1,435.9	4,868.9
---------	---------

(70-00-00) DEPARTMENT OF ELECTIONS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48

Personnel		
NSF	ASF	GF
		9.0
		9.0

**(70-01-01) Commissioner of Elections**  
 Personnel Costs  
 Travel  
 Contractual Services  
 Supplies and Materials  
 Capital Outlay  
**TOTAL -- Commissioner of Elections**

S Program		S Line Item	
ASF	GF	ASF	GF
			364.6
			1.3
			119.8
			18.5
			0.8
			505.0

		14.0
		14.0

**(70-02-01) New Castle County Department of Elections**  
 Personnel Costs  
 Travel  
 Contractual Services  
 Energy  
 Supplies and Materials  
 Mobile Registration  
**TOTAL -- New Castle County Department of Elections**

	570.5
	12.0
	138.2
	28.8
	7.7
	5.0
	762.2

		6.0
		6.0

**(70-03-01) Kent County Department of Elections**  
 Personnel Costs  
 Travel  
 Contractual Services  
 Energy  
 Supplies and Materials  
 Mobile Registration  
**TOTAL -- Kent County Department of Elections**

	289.0
	0.5
	61.8
	8.4
	3.5
	3.0
	366.2

		5.0
		5.0

**(70-04-01) Sussex County Department of Elections**  
 Personnel Costs  
 Travel  
 Contractual Services  
 Supplies and Materials  
 Mobile Registration  
**TOTAL -- Sussex County Department of Elections**

	252.0
	0.7
	30.9
	8.2
	5.3
	297.1

**TOTAL -- DEPARTMENT OF ELECTIONS**

		34.0
--	--	------

	1,930.5
--	---------



(76-00-00) DELAWARE NATIONAL GUARD

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

Personnel		
NSF	ASF	GF
73.6		30.7
73.6		30.7

(76-01-01) Delaware National Guard

TOTAL -- DELAWARE NATIONAL GUARD

S Program		S Line Item	
ASF	GF	ASF	GF
			1,337.0
			0.7
			302.4
			435.7
			54.5
			37.8
			7.0
			5.2
			7.9
			238.1
			2,426.3

Year ending June 30, 1997

(77-00-00) ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

Personnel			S Program		S Line Item	
NSF	ASF	GF	ASF	GF	ASF	GF
		2.0				73.0
						4.5
						6.2
						0.6
		2.0				84.3

(77-01-01) Advisory Council For  
Exceptional Citizens  
Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials

TOTAL -- ADVISORY COUNCIL FOR  
EXCEPTIONAL CITIZENS



Year ending June 30, 1997

	Personnel				S Program		S Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								
26								
27								
28								
29								
30								
31								
32								
33								
34								
35								
36								
37								
38								
39								
40								
41								
42								
43								
44								
45								
46								
47								
48								
49								
50								
51								
52								
53								
54								

	Personnel				S Program		S Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1								
2				(90-04-06) Terry Campus				
3				Personnel Costs				5,524.5
4	37.5		103.0	Contractual Services				106.9
5				Energy				234.8
6				Supplies and Materials				20.8
7				Capital Outlay				55.0
8				NDSL Match				1.0
9				Aid-to-Needy Students				110.0
10				Work Study				8.0
11				Grants				10.0
12				Debt Service				1,084.7
13				Instructional Equipment				51.8
14				TOTAL -- Terry Campus				7,207.5
15	37.5		103.0					
16				<b>TOTAL -- Delaware Technical and</b>				
17				<b>Community College</b>				43,174.4
18	156.2		594.0					
19								
20								
21				(90-07-01) Delaware Institute of Veterinary				
22				Medical Education				
23				Tuition Assistance				40.0
24				<b>TOTAL -- Delaware Institute of Veterinary</b>				
25				<b>Medical Education</b>				40.0
26								
27								
28				(90-08-01) Delaware Institute of Dental				
29				Education and Research				
30				Subvention				107.1
31				<b>TOTAL -- Delaware Institute of Dental</b>				
32				<b>Education and Research</b>				107.1
33								
34								
35	156.2		594.0	<b>TOTAL -- HIGHER EDUCATION</b>				157,955.0

(95-00-00) PUBLIC EDUCATION

	Personnel			S Program		S Line Item	
	NSF	ASF	GF	ASF	GF	ASF	GF
				(95-01-00) State Board of Education and State Board for Vocational Education and Department of Public Instruction			
8	49.3		86.8				6,200.4
9							23.9
10							165.0
11							26.8
12							37.6
13							Other Items
14							Teacher in Space 76.9
15							Education Compact of the States 36.2
16							Private Business and Trade School 2.0
17							Evaluation-Higher Education 1.0
18							Teacher of the Year 52.5
19							Odyssey of the Mind 20.0
20							Desegregation Monitoring 100.0
21		4.9				268.4	324.8
22							Professional Standards Council 160.8
23							Student Mentoring 150.0
24							Science in Motion 172.5
25							School Profiles 50.0
26			5.0			100.0	2,025.0
27							Student Standards & Assessment 3.8
28							Fallman Scholarships 34.0
29							Department of Public Instruction Library 27.5
30							Trailer Rental Fund 15.0
31		1.0					DPI Publications 88.3
32							Delaware Secondary School Athletic Fund 40.0
33							Registration Fees
34							<b>TOTAL -- State Board of Education and State Board for Vocational Education and Department of Public Instruction</b>
35	49.3	5.9	91.8			577.0	9,625.4
36							
37							
38	49.3	5.9	91.8				(-01) State Board and Superintendent and Department of Public Instruction
39				577.0	9,625.4		
40	49.3	5.9	91.8	577.0	9,625.4		TOTAL -- Internal Program Units

	Personnel				S Program		S Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1								
2				(95-02-00) School District Operations				
3								
4			9,977 0	Division I Units ( 6,498 )				249,261 4
5				Formula Salaries				3 178 5
6				Cafeteria Funds				91 964 0
7				Other Employment Costs				
8				Division II Units ( 7,424 )				23 406 1
9				All Other Costs				10,447 2
10				Energy				
11				Division III				46 524 1
12				Equalization				
13				Other Items				6,575 9
14				General Contingency				334 9
15				Other Items				188 0
16				Delmar Tutton				
17				Debt Service				2 597 8
18				State Board				8 923 7
19				School Districts				
20			9,977 0	<b>TOTAL -- School District Operations</b>				443,401 6
21								
22			9,977 0	(-01) Division Funding		424,781 3		
23				(-02) Other Items		7,098 8		
24				(-03) Debt Service		11,521 5		
25			9,977 0	<b>TOTAL -- Internal Program Units</b>		443,401 6		

Year ending June 30, 1997

1	Personnel			S Program		S Line Item	
	NSF	ASF	GF	ASF	GF	ASF	GF
2							
3				<b>(95-03-00) Block Grants and Pass Through Programs</b>			
4				Education Block Grants			
5				Adult Education and Work Force Training			
6							4,346.1
7				Professional Accountability and Instructional			
8							5,254.7
9				Advancement Fund			
10				Academic Excellence Block Grant			
11							22,429.1
12				K-12 Pass Throughs			
13				Delaware Nature Society			
14							9.9
15				Beach House			
16							70.0
17				Read Aloud			
18							135.0
19				Strive			
20							75.0
21				Summer School - Gifted & Talented			
22							116.2
23				Center for Economic Education			
24							156.2
25				Educational Resources			
26							199.0
27				DE Institute for Arts in Education			
28							105.0
29				Advanced Studies			
30							97.2
31				Youth and Vocational Student Organization			
32							148.2
33				Parent Early Education Center			
34							666.2
35				Pregnant Students			
36							234.6
37				Delaware Teacher Center			
38							312.6
39				Project Assist			
40							33.0
41				Magnet Start-Up Grants			
42							150.0
43				Smithsonian Project			
44							350.0
45				Special Music Program			
46							50.0
47				National Geographic			
48							500
49				Special Needs Programs			
50				Early Childhood Assistance			
51							1,783.1
52			10	Program for Children with Disabilities			
53							2,212.0
54				Unique Alternatives			
55					500.0		2,921.6
56				Exceptional Student Unit - Vocational			
57							806.4
58				Related Services for the Handicapped			
59							1,695.4
60				Adolescent Day Program			
61							36.0
62				Children Services Cost Recovery Project			
63					550.0		
64				Sterek Summer Program			
65							40.0
66				Tech-Prep 2 + 2			
67							288.0
68				Student Discipline Program			
69							7,396.0
70				Extra Time for Students			
71							2,650.0
72				Driver Training			
73				Driver's Education			
74							931.9
75			10	<b>TOTAL -- Block Grants and Pass Through Programs</b>			
76						1,050.0	55,703.4
77							
78				(-10) Education Block Grants			
79							32,029.9
80				(-15) K-12 Pass Throughs			
81							2,913.1
82			10	(-20) Special Needs Programs			
83					1,050.0		19,828.5
84				(-30) Driver Training			
85							931.9
86			10	<b>TOTAL -- Internal Program Units</b>			
87						1,050.0	55,703.4

Year ending June 30, 1997

	Personnel			S Program		S Line Item	
	NSF	ASF	GF	ASF	GF	ASF	GF
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15	1.5		3.5				
16							
17							
18							
19							
20	1.5		3.5				
21							
22	1.5		3.5				
23	1.5		3.5				
24							
25							
26							
27	0.5		5.5				
28							
29							
30			5.5				
31							
32	0.5		5.5				
33	0.5		5.5				
34							
35							
36	51.3	5.9	10,078.8			1,627.0	554,809.6

Year ending June 30, 1997

Personnel					\$		
TFO	TFC	NSF	ASF	GF	TTF	ASF	GF
<b>TOTALS</b>							
1,220.0	234.0	1,637.1	1,183.7	10,086.3	174,257.0	281,916.5	983,068.6
		156.2		594.0			157,955.0
		51.3	5.9	10,078.8		1,627.0	554,809.6
1,220.0	234.0	1,844.6	1,189.6	20,759.1	174,257.0	283,543.5	1,695,833.2

## GENERAL

**Section 2.** Any previous Act inconsistent with the provisions of this Act is hereby repealed to the extent of such inconsistency.

**Section 3.** If any provision of this Act, or of any rule, regulation or order thereunder, or the application of such provision to any person or circumstances, shall be invalid, the remainder of this Act and the application of such provisions of this Act or of such rule, regulation or order to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

**Section 4.** The monies appropriated in Section I of this Act shall be paid by the State Treasurer from the General Fund, except as otherwise referenced in Section I.

**Section 5.** The provisions of this Act to the contrary notwithstanding, any section, chapter or title of the Delaware Code and any Laws of Delaware providing for the application of "Sunset" shall be operative for those agencies, commissions or boards effective during the current fiscal year

**Section 6.** Due to the pilot budget format, the restructuring of divisions into programs within divisions has created more exempt positions per division than allowed by law for the participating departments; therefore, all exempt positions authorized by Title 29, Section 5903, Delaware Code, prior to July 1, 1987, shall remain exempt for this current fiscal year, except as otherwise specified in this Act.

**Section 7.** The abbreviations set forth in this Act for special fund authorized positions mean funding from the following:

ASF - Appropriated Special Funds  
NSF - Non-appropriated Special Funds  
TFO - Trust Fund Operations  
TFC - Trust Fund Capital

**Section 8. MERIT SYSTEM AND MERIT COMPARABLE SALARY SCHEDULES**

(a) The General Assembly of the State of Delaware supports the state-wide policy that the pay plan for Merit System employees be developed in accordance with the results of valid surveys of salaries provided by a defined labor market. The Director of State Personnel shall conduct such surveys on a yearly basis and report the findings of such surveys by December 15 to the Governor and members of the General Assembly who will be responsible for recommending and approving yearly adjustments as are necessary to maintain the competitive posture of the plan. As the Director of State Personnel has conducted the required surveys for the fiscal year ending June 30, 1997, and as the Governor and members of the General Assembly have reviewed the findings of such surveys, effective July 1, 1996, the following pay plans are established for state merit system employees:

PAY GRADE	Annual Salary STATE OF DELAWARE PAY PLAN* (Standard Work Schedule of 37.5 Hours Per Work Week)		
	80% OF Midpoint	100% of Midpoint	120% of Midpoint
1	13,097	16,371	19,645
2	14,013	17,516	21,019
3	14,996	18,745	22,494
4	16,043	20,054	24,065
5	17,169	21,461	25,753
6	18,370	22,963	27,556
7	19,653	24,566	29,479
8	21,030	26,287	31,544
9	22,503	28,129	33,755
10	24,078	30,098	36,118
11	25,762	32,202	38,642
12	27,566	34,458	41,350
13	29,496	36,870	44,244
14	31,558	39,447	47,336
15	33,769	42,211	50,653
16	36,135	45,169	54,203

17	38,664	48,330	57,996
18	41,367	51,709	62,051
19	44,265	55,331	66,397
20	47,366	59,207	71,048
21	50,679	63,349	76,019
22	54,227	67,784	81,341
23	58,023	72,529	87,035
24	62,087	77,609	93,131
25	66,431	83,039	99,647
26	71,082	88,852	106,622

\* - Annual Salary in Whole Dollars

**STATE OF DELAWARE PAY PLAN\***  
(Standard Work Schedule of 40 Hours Per Work Week)

PAY GRADE	80% OF Midpoint	100% of Midpoint	120% of Midpoint
1	13,970	17,462	20,954
2	14,947	18,684	22,421
3	15,994	19,992	23,990
4	17,113	21,391	25,669
5	18,313	22,891	27,469
6	19,593	24,491	29,389
7	20,964	26,205	31,446
8	22,433	28,041	33,649
9	24,002	30,002	36,002
10	25,682	32,103	38,524
11	27,478	34,347	41,216
12	29,404	36,755	44,106
13	31,462	39,327	47,192
14	33,665	42,081	50,497
15	36,021	45,026	54,031
16	38,545	48,181	57,817
17	41,241	51,551	61,861
18	44,126	55,157	66,188
19	47,216	59,020	70,824
20	50,522	63,153	75,784
21	54,059	67,574	81,089
22	57,844	72,305	86,766
23	61,891	77,364	92,837
24	66,226	82,782	99,338
25	70,861	88,576	106,291
26	75,819	94,774	113,729

\* - Annual Salary in Whole Dollars

(i) Merit Rule 5.0200 notwithstanding, the standard work week for employees in positions within the Correctional Officer class series, Correctional Security Superintendent class and Warden class series assigned to the Department of Correction, Telecommunication Specialist (ERC) and Telecommunication Central Control Specialist Series in the Department of Public Safety, Meat Inspectors and Meat and Poultry Inspection Coordinators in the Department of Agriculture, Emergency Services Training Administrator class assigned to the State Fire School, and Support Services Manager and Treatment Administrator assigned to the Delaware Correctional Center shall be 40 hours.

(ii) During the fiscal year ending June 30, 1997, the State Personnel Director may designate, with the concurrence of the Budget Director and the Controller General, other appropriate classes or groups of employees to work and be paid according to a standard work week of 40 hours. Such designation shall be based upon the operational necessity of agencies to require employees to regularly and consistently work in excess of 37.5 hours per week and upon the availability of any required funding.

**(b) LABOR MARKET SURVEY**

(i) The defined labor market survey in Section 8(a) for Fiscal Year 1997 shall be limited to those governments and institutions of higher education as follows

<b>DELAWARE</b>	<b>Other Counties and Municipalities</b>	<b>Other States</b>
New Castle County	Cecil County, Maryland	Maryland
Kent County	Caroline County, Maryland	Pennsylvania
Sussex County	Salisbury, Maryland	New Jersey
Wilmington	Chester County, Pennsylvania	North Carolina
Newark	Delaware County, Pennsylvania	Massachusetts
Dover	Salem County, New Jersey	New York

- (ii) The findings of the survey in Section 8(a) for Fiscal Year 1997 shall be calculated in the same manner as Fiscal Year 1996, using a comparable weighting formula and other components

(c) SELECTIVE MARKET VARIATIONS

Recognizing the need for flexibility to respond to critical external market pressures, selective market variations are permitted to the uniform pay plan structure for job classes that are key to the performance of state functions

- (1) The appointing authority shall identify job classes or job families to be considered for selective market variations according to turnover rates, recruitment problems, vacancy rates, feasibility for the work to be performed on a contractual basis and other criteria established by the State Personnel Director
- (2) Upon receipt of the identified classes, the State Personnel Director shall survey the appropriate labor market to determine the state's position in this labor market.
- (3) The Budget Director, the State Personnel Director and the Controller General shall review the information provided in Sections 8(c)(1) and (2) and shall recommend approval or disapproval for the classes for selective market compensation variations
- (4) Any such selective market variations which the State Personnel Director, the Budget Director and the Controller General have determined to be warranted and have been approved by the Joint Finance Committee, shall be designated to become effective July 1, 1996, provided that such variations have been processed as part of the regular budgetary process and the funds for such changes shall be appropriated.
- (5) Upon approval, the minimum, mid-point and maximum salary values shall be raised according to the results of the labor market surveys for the job class. For the purposes of this section, the minimum value of the salary scale shall remain at 75 percent of midpoint and the maximum value shall remain at 125 percent unless the minimum value under the selective market range for a class is less than the minimum value of the merit system pay range. The minimum for the class on selective market shall be no less than the merit system pay range minimum value. No further increases shall be applied to the scale and/or the midpoints
- (6) Employees assigned to job classifications approved under the selective market variation program shall have their salaries adjusted in accordance with the following.
  - (i) The salary of employees in positions added to the selective market variation program on or after July 1, 1996, prior to application of the general increase outlined in Section 8(d)(1), whose salary in effect as of June 30, 1996, is below the adjusted minimum salary for the assigned job classification shall be increased to the adjusted minimum salary and the salary of employees whose current salary falls within the adjusted salary range shall not be increased
  - (ii) The salary of employees in positions added to the selective market variation program before June 30, 1996, after the application of the general increase outlined in Section 8(d)(1), whose salary in effect as of June 30, 1996, is below the adjusted minimum salary for the assigned job classification shall be increased to the adjusted minimum salary and the salary of employees whose current salary falls within the adjusted salary range shall not be increased
- (7) All classes assigned to selective market variation who have not met the criteria to qualify for an adjustment for two consecutive years effective in FY 1996, shall have their midpoints reduced by seven percent effective July 1, 1996. All classes whose midpoint is less than or equal to the midpoint of the regular merit State of Delaware payscale once the general increase has been applied shall move back on to the State of Delaware Pay Plan. The process by which job classes are removed from selective market variation to the regular merit State of Delaware Pay Plan will not result in a reduction in salary for current incumbents who will move from selective market variation to the regular merit State of Delaware Pay Plan
- (8) Effective July 1, 1996, the shift differential rates paid to registered nurses in accordance with the provisions of Merit Rule 5 1425 shall be the same amount in effect as of June 30, 1996

(d) SALARY INCREASES FOR FISCAL YEAR 1997.

The amount appropriated by Section I of this Act for salaries includes the estimated amount needed to provide for a general salary increase for each state employee, unless as otherwise excepted by subsections of this Section. This increase is to be provided as follows:

(1) Salary Adjustments for departments 01 through 77.

- (i) Effective July 1, 1996, the salary of each employee shall be increased by 2.0 percent, unless otherwise noted in this Section.
- (ii) The salary of employees whose salary in effect as of June 30, 1996, is near or above the maximum salary of the assigned paygrade of the pay plan in effect on July 1, 1996, shall be increased by a percentage amount which would place the salary at the maximum or 1.0 percent, whichever is greater.
- (iii) Salaries of employees employed in accordance with Title 29, Section 5903(17), Delaware Code, shall be excluded from Subsection (d)(1)(i) of this Section and may receive a salary increase at the discretion of the agency.

(2) (i) The provisions of Subsection (d) of this Section shall not apply to the employees of the General Assembly - House or the General Assembly - Senate. Salaries for those employees will be established by the Speaker of the House of Representatives and the President Pro-Tempore of the Senate, respectively.

- (ii) The provisions of Subsection (d) of this Section shall not apply to the Governor, members of the General Assembly, Uniformed State Police, employees of the University of Delaware, Delaware State University and members and employees of the Delaware National Guard, excluding the Adjutant General. Funds have been appropriated in Section 1 of this Act for Delaware State University to provide for an increase in salaries paid from General Funds.

- (iii) Any Merit System employee who is denied the general salary increase referred to in Section 8(d)(1)(i)(ii) due to an unsatisfactory performance rating in accordance with Merit Rule 5.1000, shall become eligible for the salary increase upon meeting job requirements as defined by their supervisor, but the salary increase shall not be retroactive.

(e) MAINTENANCE REVIEWS

Any such reclassifications/regrades which the State Personnel Director determines to be warranted as a result of the classification maintenance reviews regularly scheduled by the State Personnel Office shall be designated to become effective July 1, 1996, provided that such reclassifications/regrades have been processed as part of the regular budgetary process and the funds for such reclassifications/regrades shall be appropriated.

(f) CRITICAL RECLASSIFICATIONS

(1) The classification of any position whose salary is covered by the appropriations in Section 1 of this Act may be changed to be effective January 1, 1997, or July 1, 1997, if the requested change is certified critical by the appointing authority, and approved by the State Personnel Director, Budget Director and Controller General prior to the effective date.

(2) OTHER RECLASSIFICATIONS

Other than those reclassifications/regrades approved in accordance with Section 8(e) or 8(f), no position shall be reclassified or regraded during the fiscal year ending June 30, 1997.

(g) STATE AGENCY TEACHERS AND ADMINISTRATORS

The salaries of teachers and administrators employed by state agencies and who are paid based on the Basic Schedule contained in Title 14, Section 1305, of the Delaware Code, as amended by this Act, shall receive as salary an amount equal to the index value specified in the appropriate training and experience cell multiplied by the base salary amount of \$17,674.00, divided by 7 for ten months employment. If employed on an 11 or 12 month basis, the ten month amount shall be multiplied by 1.1 or 1.2, respectively.

(h) ADMINISTRATIVE REGULATIONS

(1) The administrative regulation and procedures necessary to implement this Section shall be promulgated by the State Personnel Director, Budget Director and Controller General.

## (2) MERIT PAY

During the fiscal year ending June 30, 1997, paragraph 5 1100 of the Merit Rules for a Merit System of Personnel Administration shall be null and void.

## (3) PERFORMANCE REVIEWS.

Consistent with Chapter 16 of the Merit Rules, all state agencies shall implement the performance review prescribed by Office of State Personnel after applicable training by the Office of State Personnel. The initial performance review shall be completed for employees no later than December 31, 1996

## SALARY PLAN - PUBLIC EDUCATION

(i) Salary schedules and staffing formulas contained in Title 14, Chapter 13, Delaware Code, shall be revised as specified in this Subsection.

- (1) Amend Title 14, Subsection 1305(b), Delaware Code, by striking the words, "1996, shall be \$17,327.00 " as it appears therein and by substituting in lieu thereof the value, "1997, shall be \$17,674.00."
- (2) Amend Title 14, Subsection 1308(a), Delaware Code, by striking the salary schedule contained in said subsection in its entirety and by substituting in lieu thereof the following

Years of Experience	Clerk	Secretary	Senior Secretary	Financial Secretary	Administrative Secretary
0	9,493	10,793	11,547	11,987	12,718
1	9,968	11,285	12,043	12,486	13,223
2	10,442	11,779	12,539	12,985	13,729
3	10,918	12,274	13,034	13,482	14,233
4	11,391	12,767	13,529	13,981	14,739
5	11,867	13,261	14,027	14,479	15,244
6	12,340	13,754	14,523	14,978	15,750
7	12,816	14,247	15,018	15,476	16,254
8	13,291	14,742	15,514	15,974	16,760
9	13,765	15,235	16,009	16,473	17,265
10	14,240	15,728	16,505	16,972	17,769
11	14,715	16,222	17,000	17,470	18,274
12	15,189	16,715	17,497	17,968	18,780
13	15,663	17,209	17,993	18,466	19,285
14	16,138	17,704	18,488	18,966	19,789
15	16,613	18,197	18,984	19,464	20,296
16	17,087	18,690	19,480	19,961	20,800
17	17,563	19,184	19,976	20,460	21,305
18	18,037	19,678	20,472	20,958	21,810
19	18,512	20,172	20,968	21,458	22,316
20	18,985	20,665	21,463	21,956	22,820

- (3) Amend Title 14, Subsection 1311(a), Delaware Code, by striking the salary schedule contained in said subsection in its entirety and by substituting in lieu thereof the following:

"Years of Exp.	Custodian	Custodian Fireman	Chief Custodian Supervising 5 or Fewer Custodians	Chief Custodian Supervising 6 or More Custodians	Maintenance Mechanic	Building & Grounds Supervisor or Skilled Craftsman
0	12,145	12,642	12,894	13,891	14,353	14,761
1	12,518	13,017	13,269	14,267	14,787	15,263
2	12,894	13,390	13,644	14,640	15,224	15,762
3	13,268	13,766	14,017	15,013	15,658	16,261
4	13,644	14,139	14,393	15,389	16,037	16,761
5	14,017	14,512	14,763	15,764	16,527	17,260
6	14,393	14,890	15,139	16,136	16,962	17,758
7	14,763	15,265	15,513	16,511	17,397	18,258
8	15,139	15,638	15,887	16,885	17,832	18,756
9	15,513	16,012	16,261	17,260	18,266	19,258
10	15,887	16,387	16,636	17,635	18,702	19,755
11	16,261	16,763	17,012	18,007	19,137	20,255

- (4) Amend Title 14, Subsection 1322(a), Delaware Code, by striking said section in its entirety and substituting in lieu thereof the following:

"(a) School food service managers who have the qualifications required by the State Board of Education and who work on a program of at least seven (7) hours per day of the 10-month school year (185 days) shall receive annual salaries in accordance with the following schedule:

**SCHOOL FOOD SERVICE MANAGERS**  
Number of Pupils in School Served by Cafeteria

"Yrs of Exp.	Below 351	351-500	501-800	801-1200	1201-1600	1601-2000	2000+
0	10,949	11,757	12,564	13,371	14,182	15,262	15,798
1	11,352	12,158	12,969	13,777	14,584	15,394	16,202
2	11,757	12,564	13,371	14,182	14,987	15,798	16,606
3	12,158	12,969	13,777	14,584	15,394	16,202	17,011
4	12,564	13,371	14,182	14,987	15,798	16,606	17,415
5	12,969	13,777	14,584	15,394	16,202	17,011	17,821
6	13,371	14,182	14,987	15,798	16,606	17,415	18,223
7	13,777	14,584	15,394	16,202	17,011	17,821	18,628
8	14,182	14,987	15,798	16,606	17,415	18,223	19,034
9	14,584	15,394	16,202	17,011	17,821	18,628	19,438
10	14,987	15,798	16,606	17,415	18,223	19,034	19,841
11	15,394	16,202	17,011	17,821	18,628	19,438	20,245
12	15,798	16,606	17,415	18,223	19,034	19,841	20,651
13	16,202	17,011	17,821	18,628	19,438	20,245	21,055
14	16,606	17,415	18,223	19,034	19,841	20,651	21,462
15	17,011	17,821	18,628	19,438	20,245	21,055	21,867

- (5) Amend Title 14, Subsection 1322(c), Delaware Code, by striking the salary schedule contained in said subsection in its entirety and by substituting in lieu thereof the following:

"SCHOOL LUNCH COOKS AND GENERAL WORKERS

Years of Experience	General Worker	Cook/Baker
0	6.30	7.00
1	6.42	7.10
2	6.54	7.21
3	6.62	7.30
4	6.73	7.42
5	6.87	7.57
6	6.99	7.66
7	7.07	7.73
8	7.14	7.81
9	7.23	7.92
10	7.33	8.04
11	7.48	8.16
12	7.60	8.27
13	7.70	8.37
14	7.80	8.47
15	7.92	8.60
16	8.05	8.73
17	8.17	8.82

(6) Amend Title 14, Subsection 1324(b), Delaware Code, by striking the salary schedule contained in said subsection in its entirety and by substituting in lieu thereof the following

"(b) Aides actually working and paid ten months per year shall receive annual salaries in accordance with the following schedule.

Years of Experience	Service Aides	Instructional Aides
0	8,813	10,776
1	9,105	11,136
2	9,399	11,494
3	9,694	11,855
4	9,988	12,213
5	10,281	12,574
6	10,574	12,932
7	10,868	13,292
8	11,162	13,650
9	11,457	14,010
10	11,750	14,368
11	12,043	14,729
12	12,338	15,087
13	12,631	15,447
14	12,924	15,805
15	13,218	16,166
16	13,513	16,524
17	13,806	16,884
18	14,099	17,242
19	14,394	17,602

- (7) Amend Title 14, Subsection 1326(a), Delaware Code, by striking schedule contained in said subsection in its entirety and by substituting in lieu thereof the following
- \*Class A - \$63.42 per day
  - Class B - \$51.22 per day
  - Class C - \$39.00 per day

(j) Each school district shall continue to use salary schedules not less than those in Title 14, Section 1322, Delaware Code, for all school lunch employees.

(k) Effective July 1, 1996, the State shall pay 41 percent of the annual salary rate for school lunch employees as set forth in the salary schedules in Title 14, Section 1322(a) and (b), Delaware Code, and 37 percent of the salary rate for school lunch employees as set forth in the salary schedule in Title 14, Section 1322(c), Delaware Code. The remaining percentage of the hourly salary rate for school lunch employees shall be paid from local funds. The State shall pay other employment costs for school lunch employees at the ratio of state supported salaries to total salaries, provided for by this Section, for school lunch employees.

(l) No provision in this Act shall be construed as affecting the eligibility of school lunch employees as an employee under Title 29, Section 5501, Delaware Code.

(m) Section 1 of this Act provides an amount for salaries and other employment costs for Formula Employees in Public Education. Additional amounts are included in some Block Grants and Pass Through Programs (95-03-00). Local school districts must charge payroll for local share salary supplements and other employment costs and fringe benefits on a semi-monthly basis simultaneously with state-share charges. The amount of salary and other employment costs that can be charged to state appropriations for any one-day period or for any one individual cannot exceed the amount the individual is entitled to receive based on the state salary schedules provided by this Act and Title 14, Chapter 13, Delaware Code, divided by the number of pays the individual has chosen to schedule per year. The provisions of this Section do not apply to Division III - Equalization (Appropriation 0186) which may be charged for local contractual obligations before local current operating funds are used.

#### SALARY PLAN - DELAWARE TECHNICAL AND COMMUNITY COLLEGE

- (n) For each fiscal year, the minimum increase for a Plan A or Plan D employee shall be one-half of the general increase of the current fiscal year for all eligible merit and merit comparable state employees.

**HOLIDAY PAY - DEPARTMENT OF TRANSPORTATION TOLL  
COLLECTION EMPLOYEES**

- (c) Merit Rules 5 1410 and 5 1411 notwithstanding, all Department of Transportation employees directly engaged in toll collection operations shall be entitled to receive compensation at their normal rate of pay for holidays in lieu of compensatory time, and they shall also be entitled to receive compensation at the rate of time and one half for those hours worked on a holiday

**OVERTIME FOR WEATHER RELATED EMERGENCIES -  
DEPARTMENT OF TRANSPORTATION EMPLOYEES**

- (p) Department of Transportation Maintenance Area Yard personnel responding to weather related emergencies shall be entitled to receive compensation at one and one half times their normal rate of pay for all overtime services performed beyond the normal work week This shall apply to employees classified through the Area Supervisor level All additional personnel assigned to assist the area yards during weather related emergencies who are not covered under the Fair Labor Standards Act shall be entitled to receive compensation at their straight time rate of pay for all overtime services performed beyond the normal work week

**CALL BACK PAY - HIGHWAY EMERGENCY RESPONSE TEAM**

- (q) The Merit Rules notwithstanding, employees designated as Highway Emergency Response Team members shall be eligible for call back pay regardless of their classification

**STANDBY PAY - HIGHWAY EMERGENCY RESPONSE TEAM**

- (r) The Merit Rules notwithstanding, employees designated as Highway Emergency Response Team members shall be eligible for standby pay regardless of their classification

Section 9 (a) Except as specifically authorized to the contrary by the Delaware Code, no state employee whose title is designated in this Act shall receive total compensation whether in wages, salary, wages-in-kind or food allotment bonus or overtime from agencies of this State in excess of the total amount specified in such line item regardless of the source of funds involved No full-time, part-time or casual and seasonal employee of the State of Delaware shall receive any additional stipend for the purchase of food or be supplied with food or be reimbursed for food that was consumed during normal working hours within the State, except as provided in Title 29, Chapter 51, Section 5112 (b), Delaware Code, or unless approval has been granted by the Budget Director and the Controller General, provided, however that this Section shall not apply to State Police recruits during the period of their training In the event that an employee shall receive excessive compensation, the amount of the appropriation from the General Fund shall be reduced by the amount of such excessive compensation and the Attorney General shall take such steps as are necessary to recover from such employee any such excessive amount as has actually been paid In the event the "All Other" part of the salary is made up entirely of federal funds, and such federal funds are terminated or reduced, the state appropriation is hereby increased to provide the "Total Salary" indicated An agency may provide housing for such employee without reduction in the salary provided such housing is on the site of the principal location of employment and further provided that the head of the department or agency has determined that such location of the employee is necessary to the operation of the agency and that the employee has no other employment No agency shall provide an employee with a housing allowance or compensation for housing

(b) A state employee whose salary is designated in this Act may perform additional duties for a state agency other than his/her principal employing agency with the consent of his/her principal employing agency, and may be paid additional compensation therefore, provided such additional duties are not a part of his/her regular duties for the principal employing agency and not rendered during time paid for by the principal employing agency All wage payments resulting from the performance of such additional duties, including FLSA overtime, shall be the responsibility of the secondary employing agency unless otherwise authorized by the Budget Director and the State Personnel Director

Section 10 (a) For the fiscal year ending June 30, 1997 the salaries displayed below represent the salary effective on July 1, 1996

Budget Unit	Line Item	General Funds	All Other Funds
-------------	-----------	---------------	-----------------

(01-01-01)	Representative	27 5	
(01-02-01)	Senator	27 5	
(02-01-00)	Chief Justice - Supreme Court	117 8	
(02-01-00)	Justice - Supreme Court	113 7	
(02-02-00)	Chancellor - Court of Chancery	112.2	
(02-02-00)	Vice Chancellor - Court of Chancery	108 1	
(02-03-00)	President Judge - Superior Court	112.2	
(02-03-00)	Associate Judge - Superior Court	108.1	
(02-03-00)	Commissioner - Superior Court	57 8	
(02-03-00)	New Castle County Prothonotary	47 5	
(02-03-00)	Kent County Prothonotary	38 6	
(02-03-00)	Sussex County Prothonotary	36.1	
(02-06-00)	Chief Judge - Court of Common Pleas	111 0	
(02-06-00)	Judge - Court of Common Pleas	105.3	
(02-06-00)	Commissioner - Court of Common Pleas	57 8	
(02-08-00)	Chief Judge - Family Court	111 0	
(02-08-00)	Associate Judge - Family Court	105 3	
(02-08-00)	Commissioner - Family Court	57 8	
(02-13-00)	Chief Magistrate - Justice of the Peace Courts	77 4	
(02-13-00)	Magistrate - Justice of the Peace Courts	44.0	
(02-17-00)	Director - Administrative Office of the Courts	77 6	
(02-18-00)	Public Guardian	47 4	
(02-18-00)	Executive Secretary - Violent Crimes Compensation Board		47 9
(02-18-00)	Executive Director - Foster Care Review Board	44 0	
(10-01-01)	Governor	95 0	
(10-02-00)	Budget Director	93.5	
(10-02-00)	Executive Director - Higher Education Commission	59 1	
(10-03-01)	Director - Delaware Economic Development Office	87 3	
(10-03-04)	Director - State Housing Authority		76 5
(10-04-00)	Personnel Director	87 3	
(10-08-00)	Executive Director - Information Services	92 6	
(10-07-01)	Executive Director - CJC	67.4	
(10-07-02)	Executive Director - DELJIS	59 4	
(10-07-03)	Executive Director - SAC	66 6	
(12-01-01)	Lieutenant Governor	41 5	
(12-02-01)	Auditor	71 4	
(12-03-01)	Insurance Commissioner	71 4	
(12-05-01)	State Treasurer	77.4	
		<b>General Funds</b>	<b>All Other Funds</b>
<b>Budget Unit</b>	<b>Line Item</b>		
(15-01-01)	Attorney General	96.2	
(15-02-01)	Public Defender	77 4	
(15-03-01)	Parole Board Chairman	59.7	
(20-01-00)	Secretary - State	87 3	
(20-02-00)	Director - Human Relations	52.6	
(20-05-00)	Director - Corporations	35.2	35 3

(20-06-00)	Director - Historical and Cultural Affairs	66 5	
(20-07-00)	Director - Arts	49 7	
(20-08-00)	State Librarian	63.2	
(20-15-00)	State Banking Commissioner		80 7
(25-01-00)	Secretary - Finance	93 5	
(25-05-00)	Director - Accounting	75 4	
(25-06-00)	Director - Revenue	90 0	
(25-07-00)	Director - State Lottery		68 9
(30-01-00)	Secretary - Administrative Services	81 4	
(30-01-00)	Director - Administration	65 5	
(30-01-00)	Executive Director - Public Employment Relations Board	56 6	
(30-03-00)	Public Advocate		54 7
(30-03-00)	Director - Public Service Commission		62 2
(30-03-00)	Director - Professional Regulation		59 1
(30-04-00)	Director - Support Operations		57 3
(30-05-00)	Director - Facilities Management	70 0	
(30-05-00)	Executive Secretary - Architectural Accessibility Bd.	31 2	
(30-06-00)	Director - Purchasing	60.1	
(35-01-00)	Secretary - Health and Social Services	93 5	
(35-01-00)	Director - Management Services	69.7	7 6
(35-04-00)	Chief Medical Examiner	115 4	
(35-05-00)	Director - Public Health	120 2	
(35-06-00)	Director - Alcoholism, Drug Abuse & Mental Health	103 1	
(35-07-00)	Director - Social Services	41 3	41 3
(35-08-00)	Director - Visually Impaired	51 9	
(35-10-00)	Director - Child Support Enforcement	44 2	21 8
(35-11-00)	Director - Mental Retardation	82 6	
(35-12-00)	Director - State Service Centers	64 0	
(35-12-00)	Director - Community Services	53 3	
(35-14-00)	Director - Services for Aging and Adults with Physical Disabilities	63 2	

Budget Unit	Line Item	General Funds	All Other Funds
(37-01-00)	Secretary - Services for Children, Youth and Their Families	93 5	
(37-01-00)	Director - Management Services	72 2	
(37-02-00)	Director - Family Services	81 3	
(37-03-00)	Director - Child Mental Health Services	93.1	
(37-05-00)	Director - Youth Rehabilitative Services	77 8	
(38-01-00)	Commissioner - Correction	87 3	
(38-01-10)	Bureau Chief - Management Services	60 1	
(38-04-00)	Bureau Chief - Prisons	82 6	
(38-06-00)	Bureau Chief - Community Corrections	69 5	
(40-01-00)	Secretary - Natural Resources and		

	Environmental Control	87 3	
(40-01-00)	Deputy Secretary - Natural Resources and Environmental Control	74 1	
(40-05-00)	Director - Fish and Wildlife	33.8	33 8
(40-06-00)	Director - Parks and Recreation	71 5	
(40-07-00)	Director - Soil and Water Conservation	68 0	
(40-08-00)	Director - Water Resources	76.2	
(40-09-00)	Director - Air and Waste Management	79.2	
(45-01-00)	Secretary - Public Safety	81 4	
(45-01-00)	Director - Boiler Safety	45 2	
(45-01-00)	Director - Delaware Emergency Management Agency	27.6	27 7
(45-04-00)	Executive Secretary - Alcoholic Beverage Control Commission	58 5	
(45-06-00)	Superintendent - State Police	84.2	
(45-06-00)	Assistant Superintendent - State Police	79 0	
(45-07-00)	Director - Motor Vehicles	70 4	
(55-01-01)	Secretary - Transportation		87 3
(55-02-01)	Director - Administration		71 4
(55-03-01)	Director - Transportation Planning		84 3
(55-04-01)	Director - Highway Operations		84 3
(55-06-01)	Director - Delaware Transit Corporation		84 3
(55-07-10)	Director - Pre-construction		84 3
(60-01-00)	Secretary - Labor	8 1	73 3
(60-06-00)	Director - Unemployment Insurance		68 4
(60-07-00)	Director - Labor Standards		68 4
(60-08-00)	Director - Vocational Rehabilitation		68 4
(60-09-00)	Director - Employment and Training	4 1	64 3
(65-01-00)	Secretary - Agriculture	75 0	
(65-01-00)	Deputy Secretary - Agriculture	61 2	

Budget Unit	Line Item	General Funds	All Other Funds
(70-01-01)	Commissioner - Elections	48.7	
(70-02-01)	Administrative Director - New Castle Co Elections	45 6	
(70-02-01)	Deputy Administrative Director - New Castle County Elections	45 0	
(70-03-01)	Administrative Director - Kent County Elections	45 6	
(70-03-01)	Deputy Administrative Director - Kent Co Elections	45 0	
(70-04-01)	Administrative Director - Sussex County Elections	45 6	
(70-04-01)	Deputy Administrative Director - Sussex County	45 0	
(75-01-01)	State Fire Marshal	38 9	19 2
(75-02-01)	Director - State Fire School	58 1	
(76-01-01)	Adjutant General	71 7	
(95-01-00)	Superintendent - State Board of Education	110 4	
(95-01-00)	Deputy Superintendent - State Board of Education	93 5	

(b) (i) Salaries of designated positions in Section 10(a) of this Act shall have no further increase applied by any other section of this Act, except as provided in Section 10(b)(ii), (iii) and (iv)

(ii) If a position in Section 10(a) becomes vacant during the fiscal year, the appointing authority shall submit a request with appropriate justification to the State Personnel Director to establish the salary commensurate with the qualifications of the proposed incumbent and within the positions evaluated pay range. In reviewing requests made pursuant to this paragraph, the State Personnel Director shall provide an analysis of the request and shall solicit the advice and written consent of the Budget Director and the Controller General.

(iii) Regardless of the provisions of this Act, any state employee who is offered a promotional opportunity to become a division level manager shall be eligible for a five percent promotional salary increase. This eligibility shall be conditioned on a determination that the duties and responsibilities of the division level manager position are at least one paygrade higher than the position proposed to be vacated based on a comparison of equivalent value. For the purpose of this subsection, the equivalent value of one paygrade is defined as a seven percent difference in the constant fiscal year dollar value of the evaluated pay range midpoint of the division level manager position compared to the position that the employee is vacating. The appointing authority may request a promotional increase in excess of five percent based upon the qualifications of the selected candidate. The request and appropriate justification shall be submitted to the State Personnel Director. In reviewing requests made pursuant to this paragraph, the State Personnel Director shall provide an analysis of the request and shall solicit the advice and written consent of the Budget Director and the Controller General.

If an employee is offered an appointment to a division level manager position that has an equivalent value equal to or less than the pay grade assigned to the position the employee is vacating, the employee may retain his/her current salary provided it does not exceed the midpoint of the evaluated pay range for the division level manager position. The appointing authority may request the retention of salary in excess of the midpoint of the evaluated pay range for the division level manager position by submitting appropriate justification to the State Personnel Director. In reviewing requests made pursuant to this paragraph, the State Personnel Director shall provide an analysis of the request and shall solicit the advice and written consent of the Budget Director and the Controller General.

(iv) Positions designated in Section 10(a) of this Act may be paid a salary which is less than the designated salary if the position is filled in an "acting" basis.

(v) An agency may request a dual incumbency for a division director or equivalent position in Section 10(a) for a maximum period of six months for cases involving extended disability or terminal leave, provided that the State Budget Director and the Controller General determine that the position is essential to fill during the interim period it would otherwise be vacant. The agency shall submit a request to the Office of State Personnel. The State Personnel Director shall review this request and seek the advice and written consent of the Budget Director and the Controller General.

(c) Effective May 1, 1997, the Office of State Personnel shall submit to the Joint Finance Committee a listing of employees designated in Section 10(a). The listing shall indicate for each position the number of points applicable for Fiscal Year 1997 and the number of points of any recommended changes for any position for Fiscal Year 1998

(d) For this fiscal year, the following represent the maximum salaries appropriated within Section 1 of this Act. These maximum salaries may be increased upon approval of the Budget Director and the Controller General to accommodate changes in statutory requirements.

(e) For Fiscal Year 1997, the Budget Director and the Controller General shall have the authority to shift funding sources for the position of Executive Secretary - Advisory Council on Career & Vocational Education (95-06-00) to meet federal fund availability

July 1, 1996.

Budget Unit	Line Item	General Funds	All Other Funds
(10-02-00)	Higher Education Commissioners	2 4	
(10-04-00)	Board Members - Pensions		9 6
(15-01-01)	Board Members - Consumer Protection	3 5	
(15-03-01)	Board Members - Parole	19 5	
(20-02-00)	Board members - Human Relations	2 5	
(25-01-00)	Board Members - Revenue	33 0	
(30-01-00)	Board Members - Public Employment Relations Board	7 4	
(30-01-00)	Board Members - Merit Employee Relations Board	20 0	
(30-03-00)	Board Members - Professional Regulations		71 5
(30-03-00)	Board Members - Public Service Commission		105 0
(30-05-00)	Board Members - Architectural Accessibility Board	2 3	
(38-04-00)	Board Members - Institutional Classification	12 0	
(45-04-00)	Board Members - Alcoholic Beverage Control Commission	8 6	
(60-07-00)	Board Members - Industrial Accident Board		153 0
(70-02-01)	Board Members - New Castle County Elections	21 5	
(70-03-01)	Board Members - Kent County Elections	13 0	
(70-04-01)	Board Members - Sussex County Elections	13 0	
(95-01-01)	Board Members - State Board of Education	8 4	

(f) Amend Title 29, Section 710, Delaware Code by deleting subsection (c) in its entirety and substituting in lieu thereof the following

"(c) Any member of the Senate or the House of Representatives who is elected or appointed to any of the following positions shall, while serving in such position, receive additional yearly compensation as follows

President Pro Tempore of the Senate	\$11,254 00
Speaker of the House of Representatives	11,254 00
Majority and Minority Leader of the Senate	8,765 00
Majority and Minority Leader of the House	8,765 00
Chairperson and Vice Chairperson of the Joint Finance Committee	8,116 00
Majority and Minority Whip of the Senate	5,519 00
Majority and Minority Whip of the House	5,519 00
Members of the Joint Finance Committee	6,818 00

if a member serving in any of the leadership positions, described in paragraphs (1), (2), (3), (4), (6) and (7) of this subsection shall be elected or appointed to the position of Chairperson or Vice Chairperson or member of the Joint Finance Committee, such member shall be entitled to either the additional compensation provided in paragraphs (1), (2), (3), (4), (6) and (7) of this subsection or the additional compensation provided for in paragraphs (5) or (8) of this subsection, but not both

Stipend shall commence immediately when such member is elected or appointed to such position. Payments to such members shall be as described in Title 29, Chapter 27, Section 2712 of the Delaware Code "

(g) Upon the enactment of legislation to standardize property assessments across all three counties and the creation of a State Assessment Practices Board, consisting of seven members, to provide guidance and oversight of the property tax system, there shall be established a salary of \$0.5 per Board member

**Section 11.** Salaries and wage rates for state employees who are not covered by the provisions of Title 14, Chapter 13, Delaware Code, or by the Merit System, excluding employees of the General Assembly - House or the General Assembly - Senate, Uniformed State Police, employees of the University of Delaware, employees of Delaware State University, employees of Delaware Technical and Community College who are paid on the Administrative Salary Plan or Salary Plan A, Executive Director of Educational Technology Center, members and employees of the Delaware National Guard and employees whose salaries are governed by Section 10 of this Act, shall have the following:

(a) The salary of employees shall be comparable to salaries and wage rates paid from funds appropriated by the State to employees with similar training and experience who serve in similar positions in the Merit System. In the event that there are no similar positions in the Merit System, the State Personnel Director shall establish an exempt position classification only for the purpose of assigning a salary or wage rate to said position. On or before August 15, 1996, the State Personnel Director shall publish a list of exempt positions and the comparable Merit System class and/or paygrade for each position. In addition, such listing shall show the name of the incumbent, if the position is filled, and shall show the statutory citation which authorizes the establishment of the exempt position(s). The State Personnel Director shall provide copies of such listing to members of the Joint Finance Committee and the Controller General. No exempt employee shall be hired until an approved comparability has been assigned to the position. No reclassification/regrading, change in paygrade comparability of a filled or vacant exempt position, or change of a Merit System position to an exempt position otherwise permitted under Delaware Law shall become effective unless approved by the State Budget Director, State Personnel Director and the Controller General. In order to permit the development of the comparability list, state agencies shall provide to the State Personnel Director job descriptions of all exempt positions and position classification questionnaires describing the duties and responsibilities of each of the positions. The certification of comparability by the State Personnel Director shall not be withheld unreasonably. Those positions assigned on a list of comparability that are assigned a comparable class and/or paygrade in the Merit System shall be paid in accordance with Sections 8(c) and (d) of this Act and Merit System Rules 13.0110 and 5.0900 through 5.0931. No other salary increases shall be given to such employees unless specifically authorized in this Act.

(b) The salary of employees whose salary in effect as of June 30, 1996, is below the minimum salary of the assigned paygrade of the pay plan shall be raised to the minimum salary. This adjustment shall be made after the implementation of the general increase contained in Section 8(d)(1).

(c) Notwithstanding any other provision of the Delaware Law or this Act to the contrary, civilian employees of the Delaware National Guard shall be compensated at a salary and wage rate established by the Federal Civil Service Commission.

(d) Merit Rules 5.0900 through 5.0931 and the applicable appeal rights provided in Title 29, Section 5915, Delaware Code, shall apply retroactively to any employee who was an incumbent in a merit comparable position that was reviewed for class/paygrade comparability with an effective date of July 1, 1990 or July 1, 1991.

**Section 12.** Any employee eligible for termination pay, whose regular pay was from special funds, shall have termination pay paid from special funds. If the employee's regular pay is from both General Funds and special funds, termination pay shall be on a pro rata basis. The intent of this Section is that if any school district charges their local share to Division III - Equalization Funds, that for termination pay purposes only, these funds are considered special funds. Exceptions to this method of payment must have the approval of the Budget Director and the Controller General. All agencies shall absorb termination pay within the appropriations set forth in Section 1 of this Act.

**Section 13.** All agencies or schools receiving federal funds subject to the federal Single Audit Act shall:

(a) Include in program budgets an amount sufficient to cover actual program audit costs incurred by the Office of Auditor of Accounts. Such amount shall be based on estimated audit costs determined and provided by the Office of Auditor of Accounts.

(b) Process audit cost payment documents (Intergovernmental Vouchers) within 30 days of receipt of same from the Office of Auditor of Accounts.

**Section 14.** During the current fiscal year, all energy use systems for new facilities, rental/leasing changes and/or renovations to energy use systems must be coordinated with the Energy Office within the Department of Administrative Services Division of Facilities Management and with the Executive Department, Office of the Budget.

**Section 15.** All state agencies and departments which own land shall inform the Budget Director, the Controller General, the Secretary of Administrative Services, and the General Assembly, quarterly, as to any and all developments relating to the possible new use, lease or sale, of any portion of said land. This section shall not apply to lands owned by the Department of Transportation that are intended for transportation purposes.

**Section 16** Those agencies which receive energy funding in Section 1 of this Act or are housed in state owned or rented facilities must comply with the following heating and air conditioning guidelines during this fiscal year

(1) Operate heating systems with temperatures not to exceed 67 degrees during normal working hours. Temperatures shall also not exceed 55 degrees in those facilities during unoccupied times including the non-business hours of 5:00 p.m. to 7:30 a.m. workdays, weekends and holidays. Whenever possible, doors to unused rooms should be closed and heat controls for those areas set to the minimum temperature of 55 degrees.

(2) Operate air conditioning no more than is necessary to maintain a temperature of 78 degrees between the hours of 8 a.m. and 5 p.m. during normal working days. During non-working hours, weekends and holidays, the air conditioning temperature should be no less than is required to maintain the integrity and operation of the system.

(3) Schools, health care and correctional facilities are exempt from these restrictions if such temperatures threaten life, health or safety, however, some adjustment toward these settings should be applied. Further, when heating and cooling systems permit, administrative areas of such facilities should be operated at the temperatures stated in this section. Additionally, any room or area that houses computer mainframe equipment or other equipment that requires precise climate controlled conditions in order to operate efficiently shall also be exempt.

These actions are necessary in order to allow the State to reduce its annual energy consumption and to ensure that each agency can cover its energy needs within the appropriation contained in Section 1 of this Act.

Any internal program unit/budget unit having energy funding (electricity, natural or propane gas and heating oils) for the purpose of reimbursing a host internal program unit/budget unit must release the remaining sums to the host internal program unit/budget unit in the event that the tenant internal program unit/budget unit vacates the premises. It is the responsibility of the host internal program unit/budget unit to initiate the transfer request. Those agencies which are budgeted energy as a result of occupying a portion of a host facility's property, and do not directly pay energy bills, may not transfer energy funds other than to the host agency.

**Section 17** Section 1 of this Act provides funding for a state employee pension rate of 11.85 percent. The components of the rate are approximately 6.18 percent for the pension liability, 3.34 percent for the retiree health insurance liability and 2.33 percent for the Post-retirement Benefit Fund. The 1991 Early Retirement Option (ERO) accounts for approximately 74 percent of the pension liability and 6 percent of the retiree health insurance liability.

**Section 18** No agency shall engage a consultant or authorize expenditure of any General or special funds for the purpose of studying personnel policies and/or the wage and salary classification of employees without the written authorization of the Personnel Director, the Budget Director and the concurrence of the Controller General.

**Section 19** All state agencies are directed to remit payment for services rendered by the Division of Support Operations (Mail/Courier Services, Telephone Services, Graphics and Printing and Fleet Management) within 30 days after receipt of invoice. Services may include postal metering, paper supplies, facsimile, printing, telephone, photocopiers, printing and vehicle rental, Carvel Building parking, vehicle fuels.

**Section 20** All outside graphics and printing services for state agencies shall be obtained from the Division of Support Operations or, if appropriate, the Director of the Division of Support Operations may award a contract in accordance with Title 29 Chapter 69 Delaware Code.

**Section 21** If a timely payment problem exists, the Department of Administrative Services may require all agencies and school districts paying telephone system payments through the Division of Support Operations (30-04-00) to make monthly estimated payments toward their telephone bills. The estimated payment is due within five working days of the beginning of each month. The estimated payment should equal the average of the last three months of actual reconciled payments, or payments based on a schedule established by the Division of Support Operations. The Division of Support Operations will continue to be responsible for the actual payments to the telephone companies and the reconciliation of accounts with the user agencies and school districts.

**Section 22** With the exception of the custodial work associated with Legislative Hall and the Governor's Office, the Department of Administrative Services (30-00-00) may not hire any permanent, full-time custodial employees in any fiscal year without the approval of the Budget Director and the Controller General.

**Section 23** It is hereby directed that the Indirect Cost Recovery Program, Office of the Budget, may recover indirect costs from non-federal special funded regulatory and service agencies. Costs that are allocated to a state agency under this authority shall be billed to the state agency, and the cost is payable to the General Fund of the State. The source of payment for the billed indirect cost shall be any revenue source except the General Fund. If the billed agency is authorized to bill and

recover direct expenses, the agency shall recover indirect costs in the same manner. The effort initiated in Fiscal Year 1993 covering State Banking Commission, Professional Regulation and Public Service Commission shall continue in Fiscal Year 1997.

**Section 24.** Notwithstanding the provisions of Title 29, Section 6340(a), Delaware Code, Section 1 of this Act summarizes salary and wage and other employment costs related to those salaries and wages for agencies which remain part of the Zero Based Budget process into a single line entitled "Personnel Costs"

**Section 25.** Amend Title 29, Section 5903(17) by deleting said section and substituting in lieu thereof

(a) "Casual seasonal employees may be employed by the state on a temporary basis in order to assist agencies in the following situations.

Casual assistance - employee is needed on a sporadic or on-call basis where hours cannot be predetermined and vary greatly from week to week. Such employees may be used as needed.

Seasonal assistance - employee is needed for peak operating seasons not to exceed 9 months.

Institutional Assistance - employee is needed to provide optimum staffing levels for clients or to maintain security in an institution. Such employees may be used as needed.

Part-time Assistance - employee works less than 30 hours per week on a consistent basis. Such employees may be used as needed.

Project Assistance - employee performs duties related to a specific project that has defined objectives and an established time period of completion that does not exceed one year.

Primary Incumbent Replacement - employee is needed to fulfill the job responsibilities of the primary incumbent who is unable to perform such responsibilities for an extended period of time. Such employees may be used for a maximum of nine months or the length of time the incumbent is unable to perform the job responsibility, whichever is less.

Intern - employee is a college student enrolled in an academic program and working to gain job related experience. Such employees may be used for a maximum of nine months.

Co-op Student - employee is a high school or college student enrolled in an academic program who is working to gain job related experience. Such employees may work part time during the school year and full time during times when school is not in session and may be used as needed.

Summer/School Break Assistance - employee is hired for a specific time period and uses this employment as an introduction to government and its services. Such employees may be used for a maximum of nine months."

(b) The term durational is not applicable to any classification of employee employed by the State of Delaware.

(c) Agencies that experience circumstances that require the use of casual seasonal employees that are not defined in Subsection (a) of this Section must submit a request to the Budget Director, State Personnel Director and the Controller General for approval. Upon completion of one year of work from casual seasonal employee, the Budget Director, the State Personnel Director and the Controller General must review the agency need for such casual seasonal employment.

**Section 26.** Any agencies employing casual seasonal employees who are currently working for the state who are not defined in Section 5903(17)(a) by the appointing authority may retain such employees until a review process is completed by the Budget Director, the State Personnel Director and the Controller General. The Budget Director, the State Personnel Director and the Controller General shall present recommendations to the Governor and the Joint Finance Committee by February 1, 1997. Further employment of such employees beyond FY 1997 shall be contingent upon review of the Joint Finance Committee.

**Section 27.** Amend Title 29, Chapter 27, Section 2712 of the Delaware Code by adding a new Section to read as follows.

(d) The Chief Justice and Justices of the Supreme Court; Chancellor and Vice Chancellors of the Court of Chancery; President Judge and Associate Judges of the Superior Court; Chief Judge and Judges of the Court of Common Pleas; Chief Judge and Associate Judges of the Family Court shall be paid a salary in accordance with the lag payroll set forth in Title 29, Sections 2712(b)(1), (b)(2) and (b)(3) of the Delaware Code.

(e) Those judicial officers, as set forth in subsection (a) of this section, who were employed in such positions on December 31, 1994, shall receive a lag pay adjustment on August 15, 1995 equal to one twenty-fourth of the base pay in effect on July 15, 1995. This is a one-time adjustment to enable implementation of the lag payroll system effective August 1, 1995 with respect to those judicial officers in office as of December 31, 1994 on the same basis afforded to the other state officials and

employees except the Governor, employed by the State on that same date in positions set forth in Section 10(a) of Senate Bill 420 of the 137th General Assembly. This lag pay adjustment is not a salary increase and is not available to judicial officers who were not employed in such positions on December 31, 1994

(f) Judicial officers, as set forth in subsection (a) of this section, whose service commenced after December 31, 1994 shall participate in the lag payroll on the same terms and conditions as other participating employees of the State of Delaware hired after that same date "

**Section 28.** Chapters 5.0000 and 6.0000 of the Merit Rules notwithstanding, the State Personnel Director, in accordance with the Budget Director and the Controller General, shall have the authority to designate and approve pilot projects within specified agencies. Such pilot projects shall accrue to the mutual benefit of the State as an employer and its affected employees in the Department of Health and Social Services, the Department of Services for Children Youth and Their Families, and the Department of Correction. These pilot projects may include employee incentives which have the impact of reducing overtime usage in these departments, and which are designed to achieve a net reduction in costs to the State. Such projects may include elimination of pre-employment testing for certain classifications, eliminating the cap on vacation carry-over, gain sharing, and the substitution of certain fixed state holidays by floating holidays. Such pilot projects shall not exceed a period of two years duration, subject to renewal on a six month basis, and shall include a written assessment to the Budget Director and the Controller General of their effectiveness at the end of each period

**Section 29** (a) Notwithstanding any other provision of law, all State wage and salary payments shall be paid to employees who begin to receive such payments on or after January 1, 1996, and recipients of State retirement payments who begin to receive such retirement payments on or after January 1, 1996, by electronic funds transfer, unless another method has been determined by the Secretary of Finance to be appropriate

(b) Each recipient of State wage, salary or retirement payments shall designate one financial institution and associated account and provide the payment authorizing information necessary for the recipient to receive electronic funds transfer payments through each institution so designated.

(c) The Secretary of Finance may waive the requirements of Subsection (a) of this section for any State employee upon request by the head of an agency under standards prescribed by the Secretary of Finance

(d) The Director of State Personnel may waive the requirements of Subsection (a) of this section for any State pensioner upon request by the Pension administrator under standards prescribed by the Director of State Personnel

**Section 30** For FY 1998, the provisions of Section 6502(a), Title 29, Delaware Code, shall be waived for school districts. In its place, school districts shall be required to provide to the Budget Director and Controller General a signed copy of its approved district budget for expenditures, including positions to be funded from all funds, as well as any other information required by the Budget Director (provided the Budget Director furnishes official blank forms for such data)

**Section 31** Notwithstanding the provisions of Title 29, Section 6334(c), Delaware Code, for Fiscal Year 1998, the proposed budget plan, as prepared by the Budget Director, shall be in such a format that it can readily be analyzed and comprehensive in nature

**Section 32** For purposes of implementation of the lag payroll for Higher Education and Public Education employees, amend Section 2712, Title 29 of the Delaware Code effective July 1, 1997 by striking the title and sections (a)(1) and (a)(2) in their entirety and redesignating (a)(3) as (a)(2) and adding a new title and section (a)(1) as follows

**Section 2712** Method of Payment of State Officials and Employees

(a)(1) Effective July 1, 1997, the salaries of state officials and employees, except the Governor, shall be paid semi-monthly the fifteenth day of each calendar month and the last day of each calendar month. In any calendar month, the first payment of one half of the statutory or stipulated monthly salary or one twenty-fourth of the statutory or stipulated annual salary shall be made on the fifteenth day of such month and shall represent all wages earned during the period from the sixteenth day through and including the last day of the preceding month, and the second payment of the remaining one half of the statutory or stipulated monthly salary or one twenty-fourth of the statutory or stipulated annual salary shall be made on the last day of each month and shall represent all wages earned during the period from the first day through and including the fifteenth day of the current month "

**Section 33.** For purposes of implementation of the lag payroll for Higher Education and Public Education employees as defined in Title 29, Section 2712(a) of the Delaware Code, the semi-monthly compensation payable on July 15, 1997 for employees in Departments 90, excluding the University of Delaware, and 95 shall be as follows.

All state officials and employees in departments 90, excluding the University of Delaware, and 95 shall be entitled to receive on July 15, 1997 compensation equal to one twenty-fourth of their base pay in effect on May 15, 1997. For purposes of

this section, base pay for the Department of Public Instruction, school districts and Delaware Technical and Community College employees shall be defined as annual pay plus base supplements as defined in Title 14, Chapters 13 and 92 of the Delaware Code plus any applicable Local or College Share. Base pay for Delaware State University, Delaware Advisory Council on Career and Vocational Education and the Center for Educational Technology shall be defined as annual pay plus any applicable Local or College Share based on the applicable pay scale in effect on May 15, 1997. This one-time adjustment shall be paid from funds in the same proportion as the May 15, 1997 pay, except in school districts where Equalization Funds may be used in lieu of Local Funds. In addition, this one-time adjustment is not intended as a salary increase but shall be paid in addition to the salaries authorized in Section 1

To receive the lag pay adjustment, a teacher must have a contract with the school district for the 1997/1998 school year. For other twenty, twenty-two and twenty-four pay employees to receive the lag pay adjustment, the Department of Public Instruction, the school district, Delaware State University or Delaware Technical and Community College must intend for the employee to return AND the employee must intend to work for the next school year. If an employee does not have a contract for the 1997/1998 school year or the Department of Public Instruction, the school district, Delaware State University or Delaware Technical and Community College does not intend for the employee to return for the 1997/1998 school year on or before June 30, 1997, but later is rehired for the 1997/1998 school year prior to January 1, 1998, the employee shall receive the lag pay adjustment as defined in this section on the first pay day after re-hire.

To receive the lag pay adjustment, the officer or employee, as defined by Title 29, Section 5501 (a)(1) and (a)(2) of the Delaware Code, shall not have been previously lagged. In addition, any employee who had previously received a lag pay adjustment while employed by departments 01 - 77 in the implementation of lag pay shall not be entitled to receive the lag pay adjustment as described in this section.

If any officer or employee covered in this section leaves state service prior to June 30, 1998 (or the last day of the 1997/1998 contract period, if prior to June 30, 1998), the employee must return the lag pay adjustment to the state.

**Section 34.** Section 229 of Volume 66 Laws of Delaware, Chapter 303, classified internal affairs investigator positions as exempt positions. To clarify the status of those employees, any and all Merit System employees who were internal affairs investigators and lost Merit System status as a result of the enactment of Section 229 and who have remained internal affairs investigators since July 1, 1988, with no breaks in service, shall be considered to be on leave of absence from the Merit System.

**Section 35.** Amend Section 5209, Chapter 52, Title 29 of the Delaware Code by designating the first paragraph as (a) and adding the following new sections.

"(b) Any regularly scheduled full-time employee of the Delaware Stadium Corporation may elect to participate in the health insurance plans provided by the State Group Health Insurance program. The full cost of such coverage shall be remitted to the State of Delaware no later than the first day of each calendar month for which coverage is being provided. The benefits provided to such employees and the cost of coverage shall be the same as provided to state employees covered by this Chapter. Any Delaware Stadium Corporation employee participating in the State Group Health Insurance program shall be governed by all provisions, rules and regulations of this Chapter and the Group Health Insurance Committee.

(c) Any per diem employee of the Delaware General Assembly who has been continuously employed for 5 or more years may elect to participate in the health insurance plans provided by the State Group Health Insurance program. The full cost of such coverage shall be remitted to the State of Delaware by such employees no later than the first day of each calendar month for which coverage is being provided. The benefits provided to such employees and the cost of coverage shall be the same as provided to state employees covered by this Chapter. Any such employees participating in the State Group Health Insurance program shall be governed by all provisions, rules and regulations of this Chapter and the Group Health Insurance Committee.

**Section 36.** Amend Section 5209, Chapter 53, Title 29 of the Delaware Code by adding a new section to read as follows:

"Any volunteer fire company in Delaware may elect to participate in the health care insurance plans provided by the provisions of this Chapter for paid employees. The full cost of such coverage shall be remitted to the State of Delaware by the volunteer fire company participating no later than the first day of each calendar month for which coverage is being provided. The benefits provided to such paid employees and the cost of coverage shall be the same as provided to State employees covered by this Chapter. Any volunteer fire company in Delaware participating in the State Group Health insurance program shall be governed by all provisions, rules and regulations of this Chapter and the Group Health Insurance Committee."

**Section 37.** (a) Amend Section 5551 (5), Chapter 55, Title 29 of the Delaware Code by adding a new subsection (d) to read as follows:

(d) A person who is a paid employee of a volunteer fire company in Delaware "

(b) Amend Subsection 5551 (6), Title 29 by inserting between the word "subdivisions" and the word "in" the words "and volunteer fire company."

(c) Amend Section 5555, Chapter 55, Title 29 of the Delaware Code by inserting between the word "subdivisions" and the word "may" the words "and volunteer fire company."

Section 38 Amend the Classified Service Merit Rule No 5 1453 to reflect the rate of pay per month for Level A to be \$110 and Level B to be \$55

Section 39 (a) For the fiscal year ending June 30, 1996, any sums in the following accounts shall remain as continuing appropriations and shall not be subject to a reversion until June 30, 1997

Fiscal Year Appropriation	Account Codes	Remarks
1996	(01-05-01-01-41)	Travel
1996	(01-08-02-01-50)	Contractual Services
1994/95/96	(01-08-02-01-70)	Capital Outlay
1996	(01-08-02-01-87)	Contingency - Legal
1996	(01-08-02-01-98)	Computer Equipment
1991	(02-02-10-01-98)	Historical Records Reproduction - Kent County
1995	(02-17-04-01-98)	One Day/One Trial
1996	(02-08-10-01-70)	Capital
1994/95/96	(10-02-01-01-82)	Computer One-times
1994/95/96	(10-02-01-01-85)	Data Development
1994/95/96	(10-02-01-01-91)	Budget Automation
1995/96	(10-02-04-01-85)	Legal Obligations
1996	(10-02-04-01-93)	Crime Bill Match
1996	(10-03-03-01-87)	Welfare Reform
1996	(10-03-03-01-98)	Business Marketing
Fiscal Year	Account	
Appropriation	Codes	Remarks
1996	(10-04-02-01-98)	First Quality Fund
1996	(10-04-05-01-83)	Self Insurance
1995	(10-05-01-01-80)	Pilot Projects
1996	(10-05-01-01-82)	Health Care Commission Program Evaluation
1996	(10-06-09-01-98)	One-times
1996	(10-06-13-01-85)	Data Development
1995	(10-06-15-01-98)	Voting Machine
1994	(10-06-15-01-99)	Special Projects/Maintenance
1996	(15-03-01-01-98)	Computer Networking Equipment
1992	(20-06-02-01-80)	Markers
1996	(20-06-02-01-98)	Markers and Legislative Tape Preservation
1994	(20-06-02-01-98)	Markers and Legislative Tape Preservation
1995	(20-06-02-01-98)	Historical Preservation

1996	(20-06-04-01-98)	Museum Conservation and Maintenance
1994	(20-08-01-01-87)	Three-year DELNET
1994	(20-08-01-01-98)	SARA Title 3
1996	(25-06-01-01-86)	Systems Development
1995	(30-01-40-01-98)	PERB Collective Bargaining
1996	(30-05-10-01-87)	Underground Storage Tanks
1996	(30-05-10-01-98)	Security System and Tools
1996	(30-05-10-01-86)	Deferral Maintenance
1995	(35-01-20-01-80)	Family Service Partnerships
1995	(35-01-20-01-84)	Electronic Benefit Transfer
1995	(35-01-20-01-87)	Electronic Benefit Transfer
1996	(35-01-20-01-91)	Electronic Benefit Transfer
1996	(35-01-20-01-98)	Vehicle/State Service Centers
1996	(35-05-20-01-80)	School-based Wellness Centers
1996	(35-06-10-01-98)	Managed Care One-times
1996	(35-12-10-01-98)	Family Service Partnerships
1996	(37-01-15-01-99)	M/R
1996	(37-01-50-01-81)	MIS Development
1995	(37-05-50-01-98)	Ferris Retraining
1996	(38-01-30-01-80)	Medical Services
1996	(38-01-40-01-99)	Maintenance and Restoration
1996	(38-04-01-01-82)	Drug Testing
1994	(38-06-01-01-87)	Victims Rights
1996	(40-08-01-01-80)	Water Assessment Study
1993	(40-08-01-01-81)	Waterfund
1996	(40-08-01-01-98)	First Quality
1996	(40-09-03-01-80)	Superfund

Fiscal Year Appropriation	Account Codes	Remarks
1986	(45-01-01-03-81)	Hazardous Waste Revolving Fund
1996	(45-01-20-01-98)	800 MHz
1996	(45-06-01-01-81)	COPS More Match
1995	(45-06-01-01-85)	Berks
1996	(45-06-10-01-81)	COPS More Match
1996	(45-07-01-01-98)	First Quality
1996	(45-07-20-01-98)	Training
1996	(60-09-20-01-87)	Welfare Reform
1996	(70-04-01-01-85)	Facility Renovation
1995	(75-01-01-01-85)	Computers/Computer Equipment
1995	(75-01-01-01-98)	Computerization
1996	(75-01-01-01-98)	Deputy Fire Marshal Training and Equipment
1996	(75-03-01-01-70)	Capital
1996	(95-03-10-01-83)	Professional Accountability Block Grant
1996	(95-03-10-01-84)	New Directons
1996	(95-03-10-01-91)	Professional Development
1996	(95-03-10-01-93)	Shared Decision Making
1996	(95-03-20-01-27)	Student discipline Program
1996	(95-03-20-01-53)	Program for Children with Disabilities
1996	(95-03-20-01-82)	Early Childhood
1996	(95-04-01-01-90)	Public School Transportation
1994	(95-13-00-01-48)	Teacher in space
1996	(95-17-00-01-61)	Discipline Program-Prevention
1994	(95-17-00-01-72)	MC1
1996	(95-23-00-01-61)	Discipline Program-Prevention
1996	(95-33-00-01-61)	Discipline Program-Prevention

(b) For the fiscal year ending June 30, 1996, any sums over \$25.00 in appropriation account 0185 for public education shall remain as continuing and not be subject to reversion until September 30, 1996. Program expenses may not be incurred subsequent to the start of the regular 1996-97 school year

Section 40. Of the Continuing Appropriation for FY 1996, (01-08-02-01-87), up to \$30 0 may be used for the Legislative Clean Air Policy Committee, Inc for the litigation concerning the Commonwealth of Virginia, et al. vs EPA.

Section 41. For the Fiscal Year ending June 30, 1996, any sum in the Non-Title V 1995 appropriation (40-09-02-01-98) shall remain encumbered and shall not revert until June 30, 1997

#### LEGISLATIVE

Section 42 Of the total positions authorized in Section 1 of this Act for the Division of Research (01-08-01), the position of Research Assistant to the House and Senate Sunset Standing Committees shall be an exempt position and shall report to the Director

Section 43 Section 1 of this Act provides an appropriation to the Office of the Controller General (01-08-02) for Personnel Costs Requests from the Chairs of Standing Legislative Committees for professional staff assistance shall be submitted to the Legislative Council for approval or disapproval Approvals for professional staff assistance shall be allowed within the limits of the appropriation and as provided by guidelines established by the Legislative Council.

Section 44 Section 1 of this Act provides an appropriation to the Office of the Controller General (01-08-02) for Contingency - Legislative Council. Requests from various task forces and committees of either the House of Representatives or

the Senate for travel expenses, meeting expenses, contractual services and any other expenses shall be submitted to the Legislative Council for consideration

**Section 45** The Hay points and the salary schedule for the Controller General shall be calculated in a manner comparable to division directors

**Section 46** Section 1 appropriates \$40.0 to 01-08-02, Office of the Controller General, for Contingency Senior Center Reporting These funds will be used to reimburse Senior Centers that receive grant-in-aid funding for investment in approved software to record attendance and programs Reimbursement will be on a first-come-first serve basis and will be limited to a maximum of \$1.800

#### JUDICIAL

**Section 47** Section 1 of this Act provides an appropriation to the Department of Services For Children Youth And Their Families, Division of Youth Rehabilitation Services, Secure Care (37-05-50) for Contractual Services Of that amount up to \$100 0 shall be used for pre-trial diversion in the Superior Court (02-03-10)

**Section 48** Section 1 of this Act provides the Department of Services for Children, Youth and Their Families Appropriated Special Fund (ASF) authority in the amount of \$34 8 in order to provide public notice of court action(s) involving minors under the department's custody whose parents' whereabouts are unknown, per Family Court rules Any other fees assessments, costs or financial obligations imposed by Family Court for the issuance and service of subpoenas or summons by way of court rules, regulations or administrative procedures may not be charged to the Department of Services for Children Youth and Their Families Any such costs associated with these procedures shall be the financial responsibility of Family Court

**Section 49** Section 1 of this Act contains position authorizations and associated appropriations to the Justices of the Peace Courts (02-13-10) included exclusively for the purpose of maintaining business hours in the following courts as specified

J P Court #2 (Lewes)	10 eight-hour shifts per week
J P Court #4 (Seaford)	10 eight-hour shifts per week
J P Court #10 (Prices Corner)	12 eight-hour shifts per week
J P Court #15 (Penny Hill)	10 eight-hour shifts per week

**Section 50** For the fiscal year ending June 30, 1996, any sums in the following accounts appropriated for the purpose of merging the Wilmington Municipal Court into the State's court system shall remain as continuing appropriations and shall not be subject to reversion until June 30, 1997

1996 (02-17-01-01-82)	Municipal Court Merger
1996 (02-06-10-01-98)	Computers/Furniture--Municipal Court Merger
1996 (02-13-10-01-98)	Computers/Furniture--Municipal Court Merger

These appropriations are contingent upon enactment of legislation authorizing this merger If this legislation is enacted the funds held in line 02-17-01-01-82 shall be distributed in the following manner \$218 1 to the Court of Common Pleas (02-06-10) and \$315 5 to the Justices of the Peace Courts (02-13-10) Also upon enactment of this legislation the General Fund complements of these courts shall be increased 9 0 General Fund FTEs for the Court of Common Pleas (02-06-10) and 16 0 General Fund FTEs for the Justices of the Peace Courts (02-13-10) If this legislation is not enacted, the funds will revert to the General Fund

**Section 51** Each employee currently occupying one of the five (5 0) General Fund classified service positions that were transferred from the Department of Correction to the Administrative Office of the Courts, Office of State Court Collections Enforcement (02-17-03) per Section 53 Volume 69, Chapter 291 of the Laws of Delaware, shall have the option of remaining in the State Merit System or of transferring to the Judicial Branch Personnel System By September 1, 1996, each employee shall notify the Director, Administrative Office of the Courts in writing of his/her decision to remain with the Merit System or to transfer to the Judicial Branch Personnel System As vacancies occur, the position(s) shall be made exempt from the classified service and shall be given a Merit System comparability in the Judicial Branch Personnel System in accordance with Section 11 of this Act

#### EXECUTIVE

**Section 52** Section 1 of this Act appropriates to the Office of the Budget, Contingencies and One-Time Items (10-02-04) \$5,000 0 for Federal Contingency It is the intent of the General Assembly that these funds be used to offset various reductions in federal programs administered by state agencies occurring as a result of the federal budget process Requests for the use of such funds shall be directed to the Budget Director and Controller General, and shall contain but not be limited to the following information

- 1 Federal Program Title and CFDA Catalog number
- 2 Description of the program including a FY 1997 budget, a listing of all positions, program performance measures and a cost/benefit analysis of the program
- 3 Amount of shortfall for state Fiscal Year 1997 and future years (if available)
- 4 Actions taken by the state agency to mitigate shortfall
- 5 Estimate of termination pay payable should the program be terminated

Requests for funding through the Federal Contingency shall require the approval of the Budget Director, Controller General and co-chairs of the Joint Finance Committee. It is the intent of the General Assembly that any approval for funds is applicable solely for FY 1997 and does not in any way constitute funding support for such program in future fiscal years.

Section 53 (a) Section 1 of this Act appropriates \$2,000,000 to the Office of the Budget (10-02-01) for Data Processing Development Projects, contemplates information technology planning, development and procurement services for the following state department/agencies development projects and feasibility studies:

DEPARTMENT/AGENCY	SERVICE NEED
Legislative	Information Systems Enhancements
Executive	
Office of Information Services	Geographic Information System Direction/Coordination (Phase 2) Electronic Funds Transfer Electronic Data Interchange Banyan Messaging
DELJIS	Uniform Crime Reporting
Finance	BSMP Implementation
Services to Children, Youth and Their Families	
Correction	FACTS Enhancement Offender Tracking
Natural Resources and Environmental Control	
Elections	Permitting Technology (Phase 2) Banyan LAN Network

Allocation of the funds appropriated for this purpose shall be made by the Budget Director in consultation with the affected department/agency head. Service need allocations shall not be transferred to another department or service need unless approved by the Budget Director. In the event there are federal funds available for match in support of a project or projects, the Budget Director and the Controller General may transfer such funds as are necessary for matching purposes to the department/agency involved.

(b) No computer or computer-programming related systems project identified in Subsection (a) of this Section may be initiated by the departments/agencies during this fiscal year unless covered by a formalized plan approved by the department/agency head and the Budget Director. After the Budget Director approves a formalized project, he/she shall forward a copy to the Controller General. Such project will be in the form approved by the Budget Director or his/her designee, and shall include:

- (i) statement of work to be done;
- (ii) existing work to be modified or displaced;
- (iii) total cost of systems development and conversion effort including systems analysis and programming cost, establishment of master files, testing, documentation, special equipment costs, including full overhead, savings or additions in positions and operating costs that will result after development or conversion;
- (iv) other advantages or reasons that justify the work;
- (v) source of funding for the work and whether or not work is within scope of work envisioned under this Section; and
- (vi) estimated costs of such project shall include a three-year projection, i.e., current fiscal year and two succeeding fiscal years.

(c) No project is to be undertaken which is beyond the scope of work approved by the department/agency head and the Budget Director. This requirement applies to all computer or computer-programming related systems development performed by

the Office of Information Services and approved by the Office of the Budget, department/agency itself or an outside consultant or contractor. Further, this requirement applies to new computer programs or systems purchased or otherwise acquired and placed in use.

(d) Status reports, sufficiently descriptive in nature of each project, shall be prepared by each department/agency and provided quarterly to the Budget Director and the Controller General.

(e) In support of all projects executed between Information Services and the Office of the Budget and the concerned department/agency, Information Services shall maintain staff support to the benefit of department/agency at the projected level of effort (subject to recruitment delays) until the project work has been accomplished.

(f) No funds appropriated in Section 1 of this Act may be used to employ data or word processing professionals in support of current or proposed data or word processing systems without prior written approval of the Budget Director

(g) Any appropriation for computer hardware, software, telecommunications or other information system technologies within the Office of the Budget - Contingency and One-Time Appropriations - Technology Fund (10-02-04) shall be subject to the conditions of this section.

**Section 54.** The amount appropriated to the Office of the Budget, Contingency and One-Time Items. Prior Years' Obligations, shall be used to pay Personnel Costs, reimbursement of overpayment of fringe benefits, and other obligations except coding errors by a school district which require adjustment of the state's accounts. Any use of the Prior Years' Obligations account by any agency receiving funds in Section 1 of this Act, in excess of the amount reverted from the applicable line code on June 30 of the fiscal year in which the expense was incurred, will require the requesting agency or school district to reimburse the Prior Years' Obligations account by the amount equal to the excess requested. A line code reversion sum does not negate the necessity of encumbering sufficient funds to cover known expenses: proof of circumstances beyond an agency's ability to encumber must be documented on the request for transfer to be excluded from the reimbursement clause. All requests for prior year funds to complete the payment of one-time items will require a reimbursement to the Prior Years' Obligations account by the requesting agency from any appropriation other than personnel costs. The reimbursement can be removed from the current fiscal year's budget. The reimbursement clause shall not apply to legal judgments against the agency or school district. A reimbursement under this Section shall not be deemed to be prohibited by Title 10, Section 8111, Delaware Code

**Section 55.** For Fiscal Year 1997, Title 29, Chapter 65, Section 6529, Delaware Code is interpreted to include the ability to implement a hiring review process. All State agencies with the exception of Legislative, Judicial, Higher Education and School Districts shall be subject to the provisions of Section 6529 as interpreted by this section. Implementation of a hiring review process shall require all positions to be reviewed and approved by the Budget Director and the State Personnel Director prior to filing. All non-cabinet agency hiring requests shall also require the review and approval of the Controller General prior to filing

**Section 56.** The appropriation in Section 1 of this Act to the Office of the Budget - Contingency and One-Time Items (10-02-04) for Contingency - Appropriated Special Funds for \$20,000.0 shall be used to make adjustments in the amount of state special fund appropriations in the event additional state special funds are received which were not previously anticipated. Such adjustments shall be made in accordance with the approval of the Budget Director and the Controller General

**Section 57.** (a) Section 1 of this Act provides an appropriation to Office of the Budget, Contingency and One-Time Items (10-02-04), for this fiscal year. It is the intent that the appropriation for the Technology Fund Initiatives in the amount of \$6,300.0 shall be non-recurring expenditure items. The funds shall be allocated in accordance with this section and shall not be subject to reversion until June 30, 1999. Allocations may be transferred among agencies and projects upon request of the Executive Director of the Office of Information Services and upon approval of the Budget Director and the Controller General

Where applicable, the appropriation to Office of the Budget, Contingency and One-Time Items, Technology Fund of \$6,300.0 is subject to the following terms and conditions.

Department/Agency	Initiative
Judicial	Network Infrastructure
Executive Office of Information Services	Client Server Infrastructure
Health & Social Services	DCIS Project (Year 3)
Public Instruction	IMS Integration/Relational DataBase Management System

(b) Volume 70, Chapter 118, Laws of Delaware made an allocation to the Office of the Budget for Integrated Management Systems in anticipation of enhancements to the Delaware Financial Management System (DFMS) and acquisition of payroll, budget, human resource management and purchasing/contracting modules. Development activities will continue to be coordinated by the steering committee comprised of the Secretary of Finance, the Secretary of Administrative Services, the Executive Director of the Office of Information Services, the State Personnel Director, the Budget Director, the Secretary of Health and Social Services, the Deputy Superintendent of Public Instruction and the Secretary of Natural Resources and Environmental Control. The Committee shall provide a status report of development activities to the Controller General by March 1, 1997.

Section 58. Section 1 of this Act appropriates \$50.0 to the Office of the Budget, Contingency and One-Time Items (10-02-04) for The Family Services Cabinet Council. These funds may be used by the Cabinet Council to continue development of interagency policy initiatives concerning children and families, including those that may be brought to its attention by the General Assembly

- 1 Determine how to measure and report on the status of children and families to assist, evaluate and track state and county-wide services related to child and family well-being;
- 2 Determine how to use collected tracking information to inform decision-makers concerning policies affecting children and families in Delaware and to strengthen public action on behalf of children and families with the state.
- 3 Identify additional funds from federal and private sources to maximize the resources of the state to enhance the well-being of children and families.
- 4 Create an on-going forum and process to facilitate integrative, collaborative planning of programs and services for children and families within Delaware

The Family Services Cabinet Council is authorized to receive and spend non-state and non-federal money for the purposes listed above. Any such funds received shall be set up in an account to be administered by the Office of the Budget

The Cabinet Council is encouraged to use the Delaware Kids Count Project as a resource in the collection and analysis of data on children and family issues

The Cabinet Council is encouraged to explore with the University of Delaware and Delaware State University to determine how these institutions can participate consistent with their land grant mission

No later than September 1, 1996, the Cabinet Council shall provide a report to the Controller General on the expenditure of funds for FY 1996. Beginning September 30, 1996, the Cabinet Council shall report quarterly to the Controller General on expenditure of funds in FY 1997

The goal of this continuing effort, and the area in which its ultimate value will be realized, will be in the forging of a sustained, collaborative research extension public policy linkage that will improve public accountability for children and families in Delaware

Section 59. Section 1 of this Act makes a one-time appropriation to the Office of the Budget, Contingency and One-Time Items (10-02-04) to continue the Delaware Business Marketing Program within the Delaware Economic Development Authority (10-03-03). It is the intent of the General Assembly that the aforementioned appropriation shall be used to match non-state contributions to the program. Receipt of non-state funds shall be deposited in a state special fund for business marketing and recruitment purposes only. Expenditures of the program shall be divided between non-state contributions and the state matching appropriation such that non-state contributions are not less than one half of total expenditures. None of these funds shall be used for the hiring of full-time employees. On or before April 1, 1997, the Director of the Delaware Economic

Development Office shall provide to the Budget Director and the Controller General a report on the Delaware Business Marketing Program. The report shall include an itemized list of non-state funds received, total expenditures, and an assessment of the performance of the program to date.

Section 60. (a) Section 1 of this Act provides an appropriation to Office of the Budget - Contingency and One-Time Items (10-02-04), for the current fiscal year. It is the intent that the appropriation for One-Time Appropriations in the amount of \$ 33,523.5 shall be non-recurring expenditure items. The Budget Director shall transfer the appropriations as itemized to the departments. Each receiving department shall identify the line item, object code and, for all practical purposes, complete and separate accountability for each appropriation amount transferred. No appropriation shall be transferred without the Budget Director and the Controller General approvals. Any one-time appropriation for computer/word processing hardware, software and telecommunications, which contemplates the development of computer-related systems, shall be transferred into the line Computer One-Time Projects in Office of the Budget Administration (10-02-01). The expenditure of computer or computer related funds shall be subject to the restrictions of the Development Fund.

Further, it is the legislative intent that none of the appropriations for One-Time Appropriations be included, or be considered, as a part of the base budget request for the FY 1998 Appropriation Bill.

Where applicable, the appropriations to Office of the Budget - Contingency - One-Time Appropriations (10-02-04), are subject to the following terms and conditions

DDS	Amount	Purpose
01-01-01	\$ 10 8	Taping System - House
01-08-02	35 0	Delaware will host the Conference of Eastern Regional Council of State Governments for 1998. Of this amount, \$15 0 shall be transferred to 01-08-01, Office of Research, to be used to provide casual & seasonal employees to assist the Commission on Interstate Cooperation, as necessary
02-03-10	25 0	Board of Canvass
02-06-10	6 0	Computer & Office Equipment
02-06-10	1 2	Audio Monitor
02-08-10	2 6	Equipment for Joint Family Court - JP Court Project
02-13-10	6 0	Computer & Office Equipment
02-17-04	6 0	Computer & Office Equipment
02-17-04	52 0	Case Management
02 17 04	202 0	Computer Equipment
02-18-03	40 0	Ivy Davis Scholarship Fund
10-03-02	50 0	Main Street
10-03-02	45 0	Flags and Pins
10-03-03	300 0	Business Marketing
10-03-04	100 0	Security - Wilmington Housing Authority
10-03-04	3,000 0	Housing Development Fund
10-04-02	100 0	First Quality Fund
10-04-04	45 0	Training
10-07-03	14 5	Banyan Server/PC Upgrade
12-02-01	27 8	Computer Equipment
12-02-01	5 0	Training & Travel
DDS	Amount	Purpose
15-01-01	50 0	Workstation Upgrade
15-01-01	3 6	Furniture/Computer Equipment (Ombudsman)
15 01 01	23 9	Moving Costs and Furniture/Equipment (Dover)
15 02 01	12 0	Automated Legal Research
15-02-01	24 3	Network Topography
15-03-01	4 3	Computer Enhancements
20-01-02	15 0	Merchant Marine Bonus
20-01-03	1 0	WW I Flag
20-01-03	50 0	Veteran's Cemetery Site Evaluation
20-01-03	15 0	Utility Vehicles
20-06-01	3 5	Computer Equipment
20-06 01	10 0	Oral History
20-06-02	32 0	Markers
20 06 04	50 0	Museum Conservation Fund
20-06-04	26 7	Dump Truck
20-08 01	85 0	Delaware Library for the Blind - Automation
20 08 01	5 0	Let's Talk About It Program
25-06-01	15 0	Bar Coding Machines
25-06-01	17 0	Mail Inserter
25 06 01	15 0	Distribute New Withholding Books
30-04 10	60 0	X-Ray Equipment
30-04 20	100 0	State Information Guide
30-05 01	1,709 0	Asbestos Abatement - Schools/State Agencies
30-05-01	11,231 8	Minor Capital Improvements & Equipment

30-05-10	10.5	Tools/Equipment
30-06-10	21.1	Information Systems
35-01-20	39.5	RAD Team
35-04-01	26.0	Vehicle
35-05-20	10.0	School Clinics
35-05-20	14.0	Equipment for Environmental Risk
35-06-40	32.0	Secure Detox
35-08-01	50.0	Braille Textbooks
35-12-20	21.1	Family Visits
35-12-20	43.5	Appoquinimink Service Center
35-12-20	100.0	Claymont Satellite Center
35-14-01	3.5	Medicaid Waiver
35-14-01	7.0	Ombudsman
37-02-20	10.0	Computer Equipment
37-05-50	80.0	Capital & Equipment
37-05-50	25.0	Costs of Opening New Facility
38-01-01	40.0	Communication Equipment - Hand Held Radios
38-01-01	40.0	Moving Costs (Data Lines, Furniture, and Other Items)
38-01-01	8.0	Computer & Office Equipment for New Positions
38-01-10	200.0	Computer Equipment
38-01-10	10.0	Computer & Office Equipment for New Position
38-01-10	37.0	Vehicle - Delivery Truck
38-01-40	2.0	Computer Equipment
38-04-01	100.0	Security Equipment - Institutions
38-04-01	55.0	Security Equipment - Towers
38-04-01	2.0	Computer Equipment - new positions
38-04-02	19.1	Miscellaneous Institutional Equipment
<u>DDS</u>	<u>Amount</u>	<u>Purpose</u>
38-04-04	4.5	Safety Equipment
38-04-04	18.9	Computer & Office Equipment
38-06-02	4.6	Weapons for Probation Officers
38-06-02	23.0	Replacement Firearms & Equipment & Supplies
38-06-02	36.4	Computer Equipment
38-06-04	88.0	Field Monitoring Devices & Related Computer Equipment
40-01-01	367.9	Minor Capital Improvements & Equipment
40-01-02	3.5	Computer Equipment
40-06-02	83.0	State Park Partnership
45-01-01	30.0	Training
45-01-10	3.0	Printer
45-01-20	40.1	Training
45-01-20	11.3	Tools/Equipment
45-02-10	2.0	Training
45-04-10	2.1	Breathalyzers
45-04-10	5.8	Equipment & Cameras
45-04-10	3.0	Printer
45-06-03	13.2	Supplies & Materials
45-06-07	45.9	Radar Replacement
45-06-08	125.0	UCR Backlog Mitigation
45-06-09	36.0	Vests
45-06-09	13.6	Shotguns
45-06-11	506.2	Vehicles
45-06-12	13.8	Training
45-07-20	22.0	Training
65-01-04	25.0	Contractual Services
65-01-04	25.0	Supplies & Materials

65-01-04	13 0	2 All Terrain Vehicles
65-01-07	20.0	Workstation Replacement
65-01-11	27 5	Laptop PCs
65-01-11	5 0	Weight Replacement
70-01-01	290 5	CY 1996 Elections & Primaries
70-02-01	1,541 7	CY 1996 Elections & Primaries
70-02-01	53 5	Supplies & Materials - Registered Voter Files
70-02-01	18 0	Polling Place Rent Increase
70-03-01	307 9	CY 1996 Elections & Primaries
70-03-01	49 6	Voting Machine Storage
70-03-01	3 0	Polling Place Rent Increase
70-03-01	6 0	Computer Equipment/Software
70-04-01	208 9	CY 1996 Elections & Primaries
70-04-01	5 0	Polling Place Rent Increase
70-04-01	6 0	Computer Equipment/Software
70-04-01	78 0	Road Naming/911 Project
75-01-01	16 5	Computer Equipment
75-02-01	40 0	Computer Equipment
75-02-01	18 0	Maintenance Van
75-02-01	22 3	Audio Visual Equipment
75-03-01	4 0	Governor's Fire & Safety Conference
76-01-01	30 0	Air Guard 50th Anniversary
77-01-01	5 3	Internet/E-Mail Access
DDS	Amount	Purpose
90-01-01	1,000 0	Minor Capital Improvements & Equipment
90-03-01	1,000 0	Minor Capital Improvements & Equipment
90-04-01	50 0	Minor Capital Improvements & Equipment
90-04-02	350 0	Minor Capital Improvements & Equipment
90-04-04	530 0	Minor Capital Improvements & Equipment
90-04-06	350 0	Minor Capital Improvements & Equipment
95-01-01	150 0	Jobs for Delaware Grads (JDG)
95-01 01	30 0	Standardized Transcripts
95-01-01	1,160 7	Annual Maintenance
95-01-01	5,836 0	Minor Capital Improvements & Equipment
95-03 10	85 0	Interagency Council on Adult Literacy (ICAL)
95-03-15	20 0	Delaware Teacher Center

(b) Subsection (a) of this Section allocates \$ 11,231 8 to the Department of Administrative Services, Facilities Management (30-05-10). These funds shall be expended for minor capital improvements and equipment on behalf of the following state agencies and shall not be subject to reversion until June 30, 1999

Judicial	\$ 250 0
Department of State	642 3
Department of Administrative Services	4,147 0
Department of Health and Social Services	3,427 0
Department of Services for Children, Youth and Their Families	382 4
Department of Correction	2,000 0
Department of Public Safety	139 8
Delaware National Guard	243 3

(c) The following appropriations so listed in Subsection (a) of this Section shall not be subject to reversion until June 30,

20-06-04	\$ 50.0	State/Museum Conservation Fund
30-05-10	1,709.0	Asbestos Abatement - State Agencies/Schools
40-01-01	367.9	MCI/Equipment
90-01-01	1,000.0	MCI/Equipment
90-03-01	1,000.0	MCI/Equipment
90-04-01	50.0	MCI/Equipment
90-04-02	350.0	MCI/Equipment
90-04-04	530.0	MCI/Equipment
90-04-06	350.0	MCI/Equipment
95-01-01	5,836.0	MCI/Equipment
95-01-01	1,160.7	Annual Maintenance

(d) Fifty Thousand Dollars (\$50,000) of the funds appropriated for Department of Correction minor capital improvements and equipment may be used to conduct a study of the current correctional medical facilities throughout the State.

(e) Judicial Minor Capital Improvements. The Secretary of the Department of Administrative Services shall work in concert with the Director, Administrative Office of the Courts to prioritize projects and ensure completion of necessary renovations and equipment acquisitions within the court system

(f) It is the intent of the General Assembly that the sum of \$5,836.0 allocated in Subsection (a) of this Section to the State Board of Education (95-01-01) be used for minor capital improvements to school buildings. These funds shall not be subject to reversion until June 30, 1999. This amount shall be paid by the State Board of Education to local districts in the following amounts

School District	Maximum State Share	Maximum Local Share	Total Cost
Appoquinimink	\$179,388	\$119,592	\$298,980
Brandywine Special	554,204 21,903	369,469 0	923,673 21,903
Christina Special	953,304 65,792	635,536 0	1,588,840 65,792
Colonial Special	511,181 20,987	340,787 0	851,968 20,987
New Castle Vo-Tech	273,663	0	273,663
Red Clay Special	722,649 39,142	481,766 0	1,204,415 39,142
Caesar Rodney Special	263,486 16,157	175,657 0	439,143 16,157
Capital	315,453	210,302	525,755
Polytech	85,530	0	85,530
Lake Forest	176,140	117,427	293,567
Milford	191,131	127,421	318,552
Smyrna	160,000	106,667	266,667
Cape Henlopen Special	194,329 16,906	129,553 0	323,882 16,906
Delmar	34,429	22,953	57,382

Indian River	340,038	226,692	566,730
Special	22,319	0	22,319
Laurel	104,485	69,657	174,142
Seaford	186,384	124,256	310,640
Special	3,246	0	3,246
Sussex Vo-Tech	92,859	0	92,859
Woodbridge	87,895	58,597	146,492
Total to Schools	\$5,636,000	\$3,316,332	\$8,952,332
STATE BOARD OF EDUCATION	115,000	76,667	191,667
VOCATIONAL EQUIPMENT	85,000	56,667	141,667
TOTAL	\$5,836,000	\$3,449,666	\$9,285,666

**Section 61** Section 1 of this Act makes an appropriation of \$100.0 to the Office of the Budget, Contingency and One Time Items (10-02-04) to the Delaware State Housing Authority for the purpose of contracting for security at the Wilmington Housing Authority. These funds shall be used to provide enhanced entrance security at the six WHA high rise buildings for the elderly. It is the intent of the General Assembly that this funding be considered as a temporary solution until the WHA assumes the financial responsibility for these services. The WHA shall continue to provide quarterly reports to the Controller General and the State Budget Director.

**Section 62** Section 1 of this Act makes an appropriation to the Delaware Higher Education Commission (10-02-07) of \$20.0 to continue the implementation of the Herman M. Holloway, Sr. Scholarship program per the provisions of Title 14, Chapter 34 of the Delaware Code.

**Section 63** Section 1 of this Act makes an appropriation to the Higher Education Commission in the amount of \$135.0 for the FAME and Merit scholarship programs. Of the total funding, \$110.0 shall be used for the FAME program and \$25.0 shall be used for the Merit program.

**Section 64** Section 1 of this Act includes an appropriation to the Delaware Higher Education Commission (10-02-07) in the amount of \$10.0. These funds shall be used for the Professional Librarian/Archivist Incentive Program and shall not be spent unless enabling legislation is enacted into law. Should enabling legislation not be enacted into law, these funds shall revert to the General Fund.

**Section 65** Listed below are the allocations of Office of Information Services (10-06-00) for this fiscal year

Agency	FY 1997 Projections	
	General Funds	Other Funds
Legislative	\$ 55 0	
Judicial	567 0	
Executive	3,069.9	\$ 527 6
Other Elective Offices	245 0	
Legal	280 0	
State	1,350 2	140 0
Finance	4,500 0	110 0
Administrative Services	150 0	55 0
Health and Social Services (Dover)	655 0	75 0
Health and Social Services (Biggs)	1,499 2	1,137 9
Children, Youth and Their Families (Biggs)	80 0	
Children, Youth and Their Families (Dover)	120 0	
Correction	255 0	276 0
Natural Resources and Environmental Control	155 0	90 0
Public Safety	655 0	
Transportation		617 4
Labor	65 0	
Agriculture	10 0	

Elections	1000 0	
Fire Prevention Commission	5 3	
National Guard	5 3	
Higher Education	24 0	
Public Education	<u>2,190 3</u>	
Total	\$16,936 2	\$3,028 9
GRAND TOTAL		\$19,965 1

**Section 66.** Section 1 of this Act appropriates \$65.0 for Other Items to Delaware Economic Development Authority (10-03-03). Of this amount, \$15.0 shall be allocated for the Delmarva Advisory Council.

**Section 67.** Section 1 of this Act authorizes General Fund positions for the Delaware Economic Development Authority (10-03-03) Of this complement, position number 58670 shall maintain Merit System status. When this position becomes vacant, the position shall be made exempt from the classified service and shall be given a Merit System comparability in accordance with Section 11 of this Act.

**Section 68.** The Delaware Economic Development Authority (10-03-03) will continue to use revenue from Blue Collar Training Fund for the Workforce Development Grant Funding for this grant shall be maintained at current levels

**Section 69.** (a) Section 1 of this Act appropriates to the State Housing Authority (the "Authority") \$5,593 8 for its discretionary operating expenses. Discretionary operating expenses include personnel costs, travel, contractual services, supplies and materials and other normal business expenses of the Authority which are not required to be made pursuant to bond resolutions, trust indentures, agreements with the Federal Department of Housing and Urban Development, or otherwise required by operating agreements of the Authority

(b) Nothing herein shall be construed to require any prior approval for the Authority to meet its previously contracted obligations, including debt service requirements under bond resolution or trust indenture of the Authority, nor shall anything contained herein require any such prior approval for any expenditure by the Authority under any such bond resolution or trust indenture or under any agreement with the Federal Department of Housing and Urban Development

**Section 70.** Section 1 of this Act appropriates \$267.7 to the Office of State Personnel, Operations (10-04-02) for Generic Aides/Handicapped Employees. This appropriation is intended to encourage and enable qualified mentally and physically handicapped persons to obtain state employment per the provisions of Title 29, Chapter 59, Section 5924 of the Delaware Code

**Section 71.** Section 1 of this Act provides authorization for a Staff Development Officer to be funded with Appropriated Special Funds in the Office of State Personnel, Staff Development and Training (10-04-04) The position will support state-wide training programs for state managers, supervisors and employees. It is the intent of this Act to support these state-wide training programs, in part, with funds generated from the assessment of charges for courses on agencies participating in certain classes held by the Office of State Personnel. The Office of State Personnel may set charges for courses to sustain or create training programs with the funds placed in an Appropriated Special Fund account established by the Budget Director

**Section 72.** The State Employees Pension Benefits Review Committee will continue to review the pension plan by using appropriate and accepted comparative analysis, including, but not limited to, the benefit structure of the various state pension systems for the purpose of evaluating current pension plan benefits and recommending changes.

The committee membership will consist of the Chairman and the Vice Chairman of the Legislative Joint Finance Committee, one member of the Senate appointed by the President Pro Tem, one member of the House of Representatives appointed by the Speaker, three members appointed by the Chairman of the Board of Pension Trustees, one member of the Pension Advisory Council, the Pension Administrator, the State Personnel Director, the Budget Director, and the Controller General

The Budget Office, the Controller General's Office, and the Pension Office shall provide the committee with staff support and such other resources as the committee may require.

**Section 73.** Whenever the annual valuation of the market value of the assets of the Special Pension Fund exceeds the actuarial value of benefits available to persons entitled to receive special pensions by a factor of at least 20 percent the Board of Pension Trustees, in its sole discretion, may transfer the excess over 20 percent or any part of it to the State Employees Pension Fund for the benefit of that Fund.

**Section 74.** The Board of Pension Trustees may allocate the pension/health insurance monies received from the State during any month to ensure that funds are available to pay health insurance premiums for retirees in each month

**Section 75.** Amend §5527(d)(2). Chapter 55, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof new subsections to read as follows

"(2)(a) The minimum amount of pension payable to a statewide elected official shall be computed by multiplying his or her years of service as an elected official times the highest rate of payment being paid to any retired member of the General Assembly. The employee must elect to receive the minimum pension provided for in this subsection prior to the issuance of his or her first benefit check. This election must be made in a form approved by the Board and shall be irrevocable.

(b) A statewide elected official receiving a service or disability pension which was effective prior to July 1, 1996 may elect to receive the minimum provisions of subsection (a) of this section. This election must be made in a form approved by the Board, filed prior to July 31, 1996 to be effective August 1, 1995 for statewide elected officials receiving a service or disability pension on July 1, 1996."

**Section 76.** The duties of the State Personnel Director shall include the administration and management of a statewide human resource information system and upon implementation, serve as the administrator of all data and processes supported by the system throughout the State, including all government agencies, school districts, Delaware State University and Delaware Technical and Community College.

**Section 77.** The Delaware Health Care Commission (10-05-01) is hereby authorized to reimburse Commission members for mileage associated with Committee responsibilities.

**Section 78.** The sum of \$100 0 is hereby advanced from the Office of the Budget - Contingency and One-time Items (10-02-04) to the Office of Information Services, Production (10-06-09), in order to ensure the timely payment of postage. The Office of Information Services shall reimburse the Office of the Budget by April 30, 1997.

**Section 79.** Section 1 of this Act appropriates \$114.0 and 1 0 General Fund position to Executive, Criminal Justice Council (10-07-01) for the Domestic Violence Coordinating Council (DVCC). These funds are for operating expenses incurred by the DVCC. Effective July 1, 1996, any encumbered and unencumbered funds remaining in the FY 1995 and 1996 lines (02-08-10-00-00) shall be transferred to the Criminal Justice Council (10-07-01).

**Section 80.** Amend Title 29, Chapter 63, Section 6356, Delaware Code by deleting the words ", and (xii) no more than 3 other members from within and outside of state government as the governor may deem appropriate" and inserting in lieu thereof the following:

"(xii) the Executive Director, Office of Information Services, and (ix) no more than 3 other members from within and outside of state government as the governor may deem appropriate."

**Section 81.** During Fiscal Year 1997, the State will be reducing and consolidating the number of 1-800 telephone lines to provide more efficient and effective customer service. Effective the date the existing line(s) are no longer in service, the supporting General Fund appropriation(s) shall be transferred to a special contingency line within the Office of the Budget.

#### OTHER ELECTIVE OFFICES

**Section 82.** The Auditor of Accounts (12-02-00) is hereby directed to audit the state-funded portion of the finances of the University of Delaware as authorized by Title 29, Section 5109, Delaware Code. The Contractor conducting the audit shall be selected jointly by the University of Delaware and the State Auditor.

**Section 83.** Of the total positions authorized in Section 1 of this Act for the Auditor of Accounts (12-02-01), the position of Community Relations Officer shall be exempt from classified service.

**Section 84.** Section 1 of this Act reflects for the Auditor of Accounts (12-02-01) sufficient state-match funding for federally-mandated audit services. If during the first three months of any fiscal year, the State Auditor should experience a cash flow deficit in fulfillment of federal audit responsibilities, the Budget Director, upon the request of the State Auditor, shall attempt to advance sufficient funding from the Indirect Cost Account.

**Section 85.** Section 1 of this Act contains appropriated Special Fund position authorizations and associated appropriations for the Bureau of Examination, Rehabilitation and Guaranty within the Insurance Commissioner's Office (12-03-02). Said authorizations and appropriations include an authorization for one (1 0) Director of Administration and 1 0 Arbitration Secretary, both of which shall be exempt.

**Section 86.** The Office of State Treasurer (12-05-00) is authorized to establish and maintain a special fund (NSF) appropriation to be credited with state check write-off amounts. Use of this account is limited to the processing of state check reissues by the Office of the State Treasurer. On June 30 of each fiscal year, the unexpended state check write-off balance in

excess of \$100 0 shall be credited to the General Fund. If during a fiscal year, there is an insufficient amount to process reissues a revenue refund shall be made from the General Fund to the NSF appropriation.

**Section 87** Section 1 of this Act provides a special fund appropriation of \$1,655.4 to the State Treasurer, Administration (12-05-01) Cash Management Policy Board, authorized by Title 29, Chapter 27, Delaware Code, for the purpose of providing staff support and operational expenses, including payment of fees for banking services. The \$1,655.4 in interest income on bank deposits shall be coded as special fund revenue to provide funds for operation of the Cash Management Policy Board.

**Section 88** Section 1 of this Act authorizes \$231.9 for Expense of Issuing Bonds in the Office of the State Treasurer Debt Management (12-05-03), for payment of expenses relating to the issuance of State long-term debt. Disbursement from the Expense of Issuing Bonds fund shall not be made without the prior approval of the State Treasurer and the Secretary of Finance.

**Section 89** Section 1 of this Act establishes a special fund appropriation entitled Electronic Data Interchange in the State Treasurer, Administration (12-05-01) Cash Management Policy Board to support the Electronic Data Interchange/Electronic Data Systems Transfer Initiative. Use of these funds shall be coordinated with and approved by the Office of Information Services and the Department of Finance.

#### LEGAL

**Section 90** Section 1 of this Act authorizes an appropriation for contractual services for the Office of Attorney General (15-01-01). Of this amount, \$494.3 shall be used for the purpose of providing services covering family violence in New Castle County, and \$303.8 shall be used for the purpose of providing services covering family violence in Kent and Sussex counties.

**Section 91** Of the total Deputy Attorneys General authorized in Section 1 of this Act to the Office of Attorney General (15-01-01)

- (a) Two shall be assigned to the Family Court for service in Kent and Sussex counties.
- (b) One special fund Deputy Attorney General shall be assigned to the Family Court to be used to increase the existing staff assigned to prosecute child support cases.
- (c) Two special fund Deputy Attorneys General shall be assigned to the Family Court to enhance prosecution of domestic violence cases.
- (d) Four shall be exclusively dedicated to the function of the Industrial Accident Board in the Department of Labor Division of Industrial Affairs (60-07-01). The cost of these employees and all expenses associated with their employment shall be included in the annual tally per Title 19, Subsection 2392(c)(1) of the Delaware Code and the annual administrative assessment per Subsection 2392(d) of the same Title.
- (e) One half ( 5) shall be assigned to the Foster Care Review Board.
- (f) Two shall be assigned to provide legal representation as required to the Department of Correction.
- (g) Two shall be assigned to the Domestic Violence Units serving Kent and Sussex counties, two Administrative Assistants shall also be assigned to these units.
- (h) One shall be devoted exclusively to the handling of personnel related issues and is not intended to supplant existing Deputy Attorney General assignments in this area, and
- (i) The Attorney General shall provide legal assistance/representation as needed for the implementation of Title 5 Chapter 46, Delaware Code (Delaware Fair Housing Act) until funds in the "Special Administration Fund" are sufficiently available.
- (j) The Attorney General shall provide 1 0 ASF Deputy Attorney General assigned to the State Lottery Office to assist the State Lottery Director in the implementation of Volume 69, Chapter 446, Laws of Delaware.
- (k) The Attorney General Shall assign 1 0 General Fund Deputy Attorney General to provide legal services to the Delaware Economic Development Office.

**Section 92** Section 1 of this Act provides an appropriation of \$373.4 in Appropriated Special Funds and 6 0 positions to the Office of the Attorney General (15-01-01) to support the Securities Division. The Attorney General is authorized to collect and use revenues from the increased fees realized by Title 29, Subsection 2512, Title 6, Chapter 73, Delaware Code (Delaware

Securities Act) Balances at the end of any fiscal year in excess of \$100 0 collected from these fees shall be deposited into the General Fund

Adjustments to Appropriated Special Fund spending authority for the Office of the Attorney General (15-01-01) can be made upon the concurrence and approval of the Budget Director and the Controller General

**Section 93** Section 1 of this Act makes an appropriation of \$15 0 to the Office of the Attorney General (15-01-01) in Appropriated Special Funds to establish an Attorney General Opinion Fund The Office of the Attorney General is authorized to publish and sell the opinions of the Attorney General, to deposit the proceeds of any sales in a special fund to be designated "Attorney General Opinion Fund", and to expend all monies deposited in such fund for any expense connected with the publishing or sale of opinions of the Attorney General Copies of the published opinions will be distributed at no cost to the General Assembly, the Governor and state agencies If at the end of the fiscal year, the amount deposited in this fund exceeds \$15 0, the amount exceeding \$15 0 shall be deposited into the General Fund

**Section 94** Section 1 of this Act makes an appropriation of \$805 0 Appropriated Special Funds, \$294 4 General Funds and 23 0 positions, split-funded 66 percent Appropriated Special Funds and 34 percent General Funds to the Office of the Attorney General to support the Child Support Enforcement function The Child Support Enforcement function in the Attorney General's Office will operate on a reimbursement basis, wherein the State makes the initial expenditures and is reimbursed from federal funds controlled by the Department of Health and Social Services The reimbursement rate for operations will be 66 percent of total direct costs, the reimbursement rate for indirect costs will be 40 percent of federal dollars spent on direct salary costs

Notwithstanding the provisions of Title 29, Chapter 64, Subsection 6404 (h)(1)(2)(3) of the Delaware Code the Attorney General's Office shall be allowed to retain the federal reimbursement of direct costs in an Appropriated Special Funds account to pay the Appropriated Special Funds share of operating expenses associated with the Child Support function

The Attorney General's Office shall also be allowed to retain up to a maximum of \$30 0 of the departmental portion of indirect cost recoveries for this function to support the agency's overhead and \$16 3 to be applied to the state's share for four clerical positions The state-wide portion of indirect cost recoveries will be deposited to the indirect cost account in the Budget Office The remainder of the indirect cost recoveries and any unused portion of indirect cost funds in the Attorney General's Office will be deposited into a separate account in the Office of the Treasurer to be established by the Budget Office, and retained to be used to support the General Fund portion of the budget for this function in subsequent years

Adjustments to Appropriated Special Fund spending authority for the Office of the Attorney General (15-01-01) can be made upon the concurrence and approval of the Budget Director and the Controller General

**Section 95** Notwithstanding any other laws to the contrary including, but not limited to Part VI of Title 29, Delaware Code the Attorney General is authorized to enter into a contract for the production, distribution and marketing of the video entitled "Crossing the Line" on such terms and conditions as the Attorney General deems appropriate All revenues received by the Attorney General from such contract shall be deposited in an Appropriated Special Fund Revenues received and deposited into such ASF account shall be used for the purpose of reproducing, marketing, and distributing copies of this film

**Section 96** Section 1 of this Act provides an appropriation of \$31 4 and 2 0 General Fund positions to the Office of the Attorney General (15-01-01) for the pick up of two federally funded paralegals in Kent and Sussex counties These positions are hereby authorized as Non-Appropriated Special Fund positions for the period from July 1 1996, through March 31 1997 After April 1 1997 these positions shall be General Fund positions and the Non-Appropriated Special Fund authorizations for the two positions shall be rescinded

#### STATE

**Section 97** Section 1 of this Act provides an appropriation to the Department of State, Office of the Secretary Delaware Commission on Veteran's Affairs (20-01-02) for contractual services Of that amount, \$40 5 shall be used to provide mental health services for veterans in Kent and Sussex counties

**Section 98** Section 1 of this Act provides an appropriation to the Department of State, Office of the Secretary, Delaware Commission on Veteran's Affairs (20-01-02) for Personnel Costs and General Fund positions Of that amount \$24 0 and 1 0 ASF position shall be used for a Veterans Service Officer

**Section 99.** Section 1 of this Act includes a one-time appropriation of \$50 0 to the Department of State Office of the Secretary Veterans Cemetery (20-01-03) for the Sussex County Veteran's Memorial Cemetery Site Evaluation These funds shall not be expended unless House Bill No 573 of the 138th General Assembly is enacted into law Should House Bill No 573 not be enacted into law, these funds shall revert to the General Fund

**Section 100.** Section 1 of this Act includes a one-time appropriation of \$15 0 to the Department of State, Veteran's Cemetery (20-01-03) for Merchant Marines Pay Bonus. This amount shall not be expended unless Senate Bill No 238 of the 138th General Assembly is enacted into law. Should Senate Bill No 238 not be enacted into law, these funds shall revert to the General Fund.

**Section 101.** Section 1 of this Act establishes a special fund appropriation entitled Technology Infrastructure Fund in the Division of Corporations (20-05-01). All revenues derived as a result of 69 Laws of Delaware, Chapter 52, will be deposited into this fund to be used for technological and infrastructure enhancements for the Division of Corporations. Quarterly reports regarding the status of this fund shall be made by the Department of State to the Budget Director and the Controller General.

**Section 102.** The provisions of Title 29, Section 2311 (e) of the Delaware Code, notwithstanding, the sum of \$1 500 0 in the Division of Corporations, Corporate Revolving Fund shall be continued into Fiscal Year 1997. A total of \$1,250 0 shall be used for the Division of Corporations computer enhancements project.

**Section 103.** Section 1 of this Act provides an appropriation to the Department of State, Division of Historical and Cultural Affairs, Office of Administration (20-06-01) for "Delaware Heritage Commission". Of that amount, \$10 0 shall be used at the discretion of the Delaware Heritage Commission for scholar awards, challenge grants and publications.

**Section 104.** Section 1 of this Act provides an appropriation to Executive, Office of the Budget, "Contingency & One-Time Items" (10-02-04) for the following historical markers.

Three (3) in Kent County  
Westwoods Methodist Church  
Providence Methodist Church  
St. John's United Methodist Church  
Concord Methodist Church - Laurel  
First Jewish Farmers - Viola  
Robinson House  
Naaman's Creek  
Old Claymont High School  
Antioch Methodist Church - Frankford  
Breaknock  
St. George's Methodist Church - Clarksville  
Harmony Methodist Church - Millsboro  
John G. Townsend - Selbyville

**Section 105.** Section 1 of this Act provides a special fund appropriation to the Department of State, Delaware State Museums for conference center operations. The department is hereby authorized to retain revenue received from land and building rentals at Buena Vista, Belmont Hall, Dayett Mills and the McCrone House to support these operations.

**Section 106.** Section 1 of this Act provides an appropriation to the Department of State, Libraries (20-08-00) for Library Standards. Funds shall be paid to libraries in installments equal to 25 percent of the total amount allocated to that library, one installment each quarter of the fiscal year. In the event the library is entitled to \$6 0 or less, the amount shall be paid on an annual basis. Funds granted to any library under the provisions of Title 29, Chapter 66, Delaware Code, if unspent at the end of the fiscal year shall not revert to the General Fund, but instead shall be held in an account for the benefit of the library from which the unspent funds came. These funds may be spent in subsequent years for purposes described in Title 29, Chapter 66, Delaware Code. The use of such carryover funds shall not be used as part of any subsequent years' formula payment.

**Section 107.** The Division of Libraries (20-08-00) is hereby authorized to retain funds appropriated in FY 1994 for the development of the DELNET Project. These funds shall be used in conjunction with the \$97 0 appropriated in Section 1 of this Act for the Delaware Electronic Library.

**Section 108.** Section 1 of this Act includes a one-time appropriation to the Department of State, Division of Libraries (20-08-01) of \$5 0 for the "Lets Talk About It" Program. These funds shall not revert to the General Fund if unencumbered or unexpended until June 30, 1998.

## FINANCE

**Section 109.** Credit cards authorized by the Secretary of Finance and distributed by the Division of Purchasing to state employees may be used for the procurement of small purchases made by state agencies for the fiscal year ending June 30, 1997 pursuant to policy and procedures as established by the Secretary of Finance.

Section 110 The Department of Finance Office of the Secretary, is authorized in Fiscal Year 1997 to maintain a special fund with the State Treasurer for the acquisition of technology and payment of other costs incident to the implementation of computer systems at the Department of Finance. Deposits to the special fund shall be from the receipts escheated to the State. Deposits to this special fund shall not exceed \$550 0

Section 111 The Division of Revenue is authorized to establish and maintain a special fund with the State Treasurer for the purposes of contracting for the collection of delinquent State taxes. The contracts may provide for either or both (a) collection or assistance in collection of delinquent accounts from businesses or persons, (b) audit of business taxables under the direct supervision of the Division of Revenue management, or (c) audit of physical inventory of alcoholic beverage wholesalers. Deposits to the special fund shall be from the collection of delinquent taxes under such contracts. Deposits which are not required to carry out the purposes described in this Section, which purpose shall be deemed to include recording of Division of Revenue judgments and warrants in the offices of clerks of various courts, shall be transferred by the Director of the Division of Revenue to the General Fund within 30 days from the end of each quarter of the calendar year. A detailed report on all expenditures from and collections to this special fund shall be sent annually to the Budget Director and the Controller General.

Section 112 The Director of the Division of Revenue shall have the authority to accept, on whatever terms and conditions he/she may establish by regulation, payment of taxes by credit card. Such authority shall include a determination not to accept such payments or to permit payment only for certain classes of taxes to be specified by the Director. The Director is authorized to enter into contracts for the processing of credit card payments and fees associated with such contracts. Up to \$40 5 of the Contractual Services Appropriated Special Fund line may be used to pay for fees and expenses associated with the collection of taxes by credit cards.

Section 113 The Director of the Division of Revenue shall have the authority to enter into agreements according to which contingency fees are provided to finders of property to be escheated to the State or to other persons identifying abandoned property by means of audit or otherwise. When the Director deems it to be appropriate, he/she may enter into escrow, custodian, or similar agreements for the purpose of protecting the state's interest in property to be escheated or fees payable pursuant to the aforesaid agreements. The Director may direct that payment for said fees or other costs incident to escheat of property under the aforesaid agreements, including litigation expenses incident to escheat administration be made out of such money held in the escrow, custodian or other account established under this paragraph. No account shall be used to pay for employees of the Division of Revenue. Section 1 of this Act establishes an Appropriated Special Fund account "Escheat" from which charges relating to receiving and processing remittances and reports by holders, and claims by owners of abandoned property, as well as advertising and travel fees and associated costs may be paid and into which abandoned property remittances may, at the discretion of the Director, be deposited. Unencumbered balances on June 30, in excess of \$30 0, shall revert to the General Fund. A semi-annual report of amounts in escrow or custodian accounts shall be furnished to the Budget Director and the Controller General.

Section 114 The Division of Revenue is authorized to require payment of fees for issuance of certificates or other documents reflecting the status of taxes, if any, owed by the taxpayer requesting such certificate. In addition, the division is authorized to regulate payment of fees for collection of debts owed to claimant agencies. Payment of these fees shall be deemed to reduce the contractual services expenditures of the division and shall be recorded as expenditure-reducing items.

Section 115 Amend Section 545 Title 30 of the Delaware Code, by adding a new subsection (h) to read as follows:

(h) In addition to the authority set forth in other subsections of this section, the Director may in his discretion enter into an agreement with claimant agencies under which the Director shall be authorized to use the division's agents and employees to collect debts owed to the claimant agency under the same laws, regulations and provisions applicable to the claimant agency and in the same manner as the claimant agency less the amount of reimbursement for the Division of Revenue's cost as may be agreed between the Director and the claimant agency.

Section 116 Pursuant to §4815 (b) (2) of Title 29, funds from the State Lottery Fund shall be released to an appropriately established account within the Division of Alcoholism, Drug Abuse and Mental Health on or before the fifteenth day of each month, the amount of which shall be determined based on the results of video lottery operations conducted during the immediately preceding month. The first such release of funds as established by this section shall be based upon the results of video lottery operations conducted from July 1, 1996 to July 31, 1996, and shall occur on or before August 15, 1996.

Section 117 (a) In the event that the State Lottery's amount of contractual services shall exceed the amount in Section 1 of this Act due to increased lottery ticket sales, the Appropriated Special Fund Budget in Section 1 of this Act may be amended by the Secretary of Finance, the Controller General and the Budget Director, provided, the total operating budget for this fiscal year shall not exceed 20 percent of gross sales as limited by Title 29, Section 4815(a) of the Delaware Code.

(b) In the event the State Lottery's amount of contractual services shall exceed the amount in Section 1 of this Act due to increased video lottery net proceeds, the Appropriated Special Funds Budget in Section 1 of this Act may be amended by the

Secretary of Finance, the Controller General and the Budget Director, as limited by Title 29, Section 4815(b) of the Delaware Code

#### ADMINISTRATIVE SERVICES

**Section 118** For the fiscal year ending June 30, 1997, the Department of Administrative Services is allowed to retain as a continuing appropriation up to 25 percent of its unencumbered General Funds in excess of \$ 1, except for debt service one-time items and personnel costs. The Department of Administrative Services shall use this appropriation for the maintenance and restoration of state facilities.

**Section 119** Section 1 of this Act recognizes that legislation establishing a state-wide Fleet Management System (30-04-40) was enacted. All funds authorized for the operation of passenger vehicles and local travel, including mileage private car, other travel in-state, lease/rent cars, repair cars, repair wagons and vans, gasoline from state pumps, gasoline purchased state contracts and automotive equipment may be used for expenses associated with the lease of passenger vehicles from the Department of Administrative Services. It is also recognized that a state-wide Fleet Management System will be established incrementally, and that the majority of the operating dollars to run such a system will come from agencies' existing vehicle expenses. Therefore, the Budget Director, with the concurrence of the Controller General, is authorized to transfer funds for the operation of passenger vehicles and passenger vehicle leasing costs so that no agency lacks the necessary appropriated funds to use the centralized fleet pool system.

**Section 120** All acquisition of copiers in state buildings which are managed by the Division of Facilities Management (30-05-00) Department of Administrative Services (30-00-00), must have the approval of the Secretary of Administrative Services.

**Section 121** Notwithstanding the provisions of Title 29, Subsection 8806(e) of the Delaware Code, funds generated by the Surplus Property Unit and deemed to be surplus by the Secretary of Administrative Services, shall be transferred to the Division of Facilities Management (30-05-10) by the Budget Office for the maintenance and restoration of state buildings and grounds maintained by the Department of Administrative Services.

**Section 122** a) During Fiscal Year 1997, the Department of Administrative Services, Division of Facilities Management (30-05-10), shall retain the rental fees as appropriated special funds for the buildings known as the Daniel L. Herrmann Courthouse and the Sussex County Courthouse. The retained portion must be deposited as per state laws and shall be disbursed per Section 1 of this Act.

b) In addition, revenues generated from the operation of the Carvel Parking Garage shall be used by this Division for renovation and repair of the garage facility. Notwithstanding the provisions of Title 29, Chapter 69 of the Delaware Code, the Department of Administrative Services may include a provision in the management contract for the Carvel Building parking garage that the contractor perform capital improvements to the garage.

**Section 123** For energy backcharge purposes, the Department of Administrative Services (host department, Fiscal Year 1997 Energy Budget assumes that Motor Fuel Tax uses ten percent of the new Public Safety Building, for which energy payment is the responsibility of the host department. The Department of Transportation is responsible for paying the Motor Fuel Tax portion of the energy bills upon request for payment by the host department.

**Section 124** Senate Substitute No. 2 to Senate Bill 223 of the 138th General Assembly centralizes the purchasing function within the Department of Administrative Services. Should this legislation be enacted into law, the following transfers shall be made to the Department of Administrative Services, Division of Purchasing, Contracting (30-06-10): Budget Position No. 53567 and \$40.4 General Funds from the Department of Correction (38-01-10), Budget Position No. 10759, a vacant position in the Department of Labor (60-01-10), and Budget Position Nos. 3437 and 3994 (35-05-40), Budget Position No. 4342 (35-05-60), and Budget Position No. 3187 (35-05-50), vacant positions in the Department of Health and Social Services.

#### HEALTH AND SOCIAL SERVICES

**Section 125** Results of investigations conducted by the Audit and Recovery Management Services concerning any and all public welfare programs administered by the Department of Health and Social Services that indicate possible error or fraud shall be transmitted to the Office of the Attorney General directly by the Secretary of the Department of Health and Social Services without approval by any other authority. The Office of the Attorney General shall prosecute those cases deemed actionable and return the rest to the Department of Health and Social Services for collection of overpayment. The Secretary of the Department of Health and Social Services shall file a quarterly report directly with the Budget Director, the Controller General, the Director of Research of Legislative Council, members of the Joint Finance Committee, and the Chairmen of the House and Senate.

Committees on Health and Social Services by the last day of the next month after the end of a quarter, which report shall not be subject to prior review by any other authority

**Section 126** The Department of Health and Social Services operates numerous programs that are dependent upon federal funds and regulations. In the event that the federal government enacts federal Fiscal Year 1996 or 1997 budget legislation that will modify, eliminate or replace existing state programs that receive matching federal funds, the Secretary of the Department of Health and Social Services shall submit an appropriate plan of action to the Budget Director and the Controller General for their review and approval. This plan will describe options for the continuation or elimination of programs within the new federal parameters. Prior approval of the Budget Director and Controller General shall be required before any modifications of current policies, procedures or funding mechanisms are enacted as a result of any federal funding legislation or other federal actions. Any changes exceeding \$10 million in the aggregate shall be approved by the Joint Finance Committee.

**Section 127** Temporary, casual and seasonal Registered Nurses, Licensed Practical Nurses and Certified Nursing Attendants in the Department of Health and Social Services may be allowed to work more than 129 working days in a fiscal year upon the approval of the department Secretary. These positions shall not be considered positions of a continuing nature or regular employment.

**Section 128** The sum of \$170.0 is hereby advanced from the General Fund of the State to the Management Services IPU (35-01-20), in order that the Public Welfare Revolving Fund emergency checks can be paid on a timely basis and without interruption.

**Section 129** Section 1 of this Act makes an appropriation to the Department of Health and Social Services, Social Services (35-07-01) for Title XIX Federal Programs (Medicaid). Notwithstanding the provisions of the Delaware Code to the contrary, the Division shall be permitted to use Medicaid (XIX-OTS) funds when necessary to reimburse the federal government for its portion of overpayments not collected within sixty (60) days of identification. When such overpayments are collected, the funds collected shall be deposited back into the Medicaid XIX-OTS account.

**Section 130** The Division of Public Health, Community Health (35-05-20) is appropriated \$2,901.0 in "School-Based Health Centers" for planning, implementing and operating school-based health centers. In addition, funding for 2.0 General Fund positions related to the operation of school-based health centers is appropriated under Personnel Costs for the continued operation of the Middletown School-Based Health Center and for the administration and planning of all school-based health centers.

During Fiscal Year 1997, Community Health shall implement up to seven new school-based health centers which will be open for nine months. Status reports shall be submitted to the Budget Director and the Controller General not later than December 15, 1996, and May 15, 1997.

**Section 131** Notwithstanding any other provisions of the Delaware Code, the following merit positions shall become exempt at such time as the current incumbent vacates such position:

Nursing Home Director I, Emily Bissell Hospital (B P #31162)  
Nursing Home Director I, Governor Bacon Health Center (B P #4554)  
Nursing Home Director II, Delaware Hospital for the Chronically Ill (B P #3892)

When any of these positions become vacant, the State Personnel Director shall take the appropriate steps to carry out the provisions of this section.

**Section 132** The Division of Public Health (35-05-00) currently operates the following programs for which a fee for service is charged to cover the cost of the program:

- Child Health
- Vanity Birth Certificate
- Public Water
- Medicaid Enhancements
- Infant Mortality
- Medicaid Aids Waiver
- Children with Special Needs
- Family Planning
- Newborn
- Indirect Costs
- Vaccines
- Food Inspection
- Medicaid Contractors/Lab Testing and Analysis

Maternal and Child Health Services  
 Tuberculosis (TB)  
 Sexually Transmitted Diseases (STD)  
 Child Development Watch  
 Preschool Diagnostic and Development Nursery (PDDN)  
 Home Visits  
 Casual/Seasonal Nursing Services  
 Case Management for High Risk Pregnancies

Notwithstanding the provisions of Title 29, Section 6102, Delaware Code, the Division shall be allowed to collect and expend fees from the aforementioned accounts, except as noted below. Corresponding Appropriated Special Fund spending authority has been provided in Section 1 of this Act.

The Children with Special Needs and Child Health programs shall continue to deposit 30 percent of program collections to the General Fund.

**Section 133.** Section 1 of this Act includes an appropriation to the Department of Health and Social Services, Division of Public Health, Director's Office/Support Services (35-05-10) for Contractual Services. Of that amount, \$159,800 shall be used for the purpose of providing school nursing services three days a week to non-public schools in New Castle County and \$9,500 for two schools in Kent County.

The Secretary of the Department of Health and Social Services will ensure that the contracts with the various schools in this program are executed no later than August 15 of each year. The Secretary will also ensure that timely payments are made to all contractors.

**Section 134.** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Public Health, Community Health (35-05-20), in the line item, "Office of Narcotics and Dangerous Drugs", in the amount of \$30,000. This amount shall be used at the discretion of the Drug Control Administrator and shall not be utilized for normal operating budget items attributed to the Office of Narcotics and Dangerous Drugs.

**Section 135.** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division of Public Health, Community Health (35-05-20), for Contractual Services. Of that amount, \$70,000 shall be available for medicine, equipment and part-time nursing services for a community-based adult health services clinic serving the Claymont area of New Castle County.

**Section 136.** A non-appropriated special fund revolving account is created in the Division of Public Health (35-05-20) for retention of contributions from private insurance companies to purchase immunization serum for the Universal Child Immunization Program. This shall be an interest bearing account.

**Section 137.** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division of Public Health, Community Health (35-05-20) for Contractual Services. Of that amount, \$65,000 shall be used to contract for mammography screening. These services shall be provided by the mobile mammography van. In addition to the above General Funds, \$19,000 shall be made available from the Preventive Health and Health Services Block Grant.

**Section 138.** Section 1 of this Act provides an appropriation of \$300,000 to the Department of Health and Social Services, Division of Public Health, Community Health (35-05-20) to provide hepatitis B vaccinations to individuals who are members of volunteer ambulance companies or volunteer fire companies as "first responders" in the State of Delaware. The Division of Public Health shall purchase vaccine and contract for the injection of vaccine at local fire stations or other sites mutually agreed upon by the fire companies and the Division of Public Health. No such vaccinations shall be furnished until after certification by the volunteer fire or ambulance company on a form provided by the Division of Public Health, indicating that the person for whom the vaccination is desired, is a member in good standing of a volunteer ambulance or volunteer fire company in the State of Delaware. A record of the names and addresses of all persons immunized shall be maintained by the Division of Public Health. To insure the success of this program, the Division of Public Health and representatives of the Delaware Volunteer Firemen's Association shall work collaboratively in the best interests of all parties. The Division of Public Health may promulgate reasonable rules and regulations regarding the vaccination of volunteer firemen and individuals who volunteer for ambulance companies.

**Section 139.** Section 1 of this Act includes the following appropriation to the Department of Health & Social Services, Division of Public Health, Emergency Medical Services (35-05-30) to implement the Statewide Trauma Care System: \$38,400 for Personnel Costs for 1.0 Trauma System Coordinator position and \$32,800 for Contractual Services. These funds shall not be spent unless House Bill No. 433 or a substitute for House Bill No. 433 of the 138th General Assembly is enacted into law. Should House Bill No. 433 or a substitute bill not be enacted into law, these funds shall revert to the General Fund.

**Section 140** The Department of Health and Social Services, Alcoholism, Drug Abuse and Mental Health (35-06-00) will be able to bill for additional Medicaid Revenue due to a waiver of the Institution for Mental Diseases exclusion, as part of the Medicaid Managed Care waiver. This additional revenue shall be deposited to the General Fund, and the division shall make every effort to ensure that these bills are submitted to the appropriate entities in an expeditious manner.

**Section 141** Proposed trauma legislation guidelines promulgated through House Bill 433 of the 138th General Assembly or a substitute bill for House Bill No. 433 shall in no way commit the State to the provision of additional helicopter service to transport trauma victims to area hospitals.

**Section 142** Section 1 of this Act provides General Funds in the amount of \$2,800 0 in the Department of Health and Social Services, Division of Alcoholism, Drug Abuse and Mental Health. This amount is supported by disproportionate share revenues of \$3,800 0 that are projected to be collected from the federal government during Fiscal Year 1997. The department shall deposit disproportionate share revenues to the General Fund and shall continue to maintain its efforts to ensure that the State receives its allotted disproportionate share payments from the federal government. The department shall report quarterly to the Budget Director and the Controller General on disproportionate share revenue received.

**Section 143.** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Alcoholism, Drug Abuse and Mental Health, Inpatient Mental Health (35-06-30), for Contractual Services. Of that amount, \$41 2 shall be made available for a Nurse Intern Program to enable graduate nurses to take graduate courses to increase their skills in specialty areas.

It is understood that participants in this program will provide clinical services with compensation to Delaware State Hospital during the duration of their graduate level education. It is further understood that these individuals shall remain in the employ of Delaware State Hospital for a minimum of one year after graduation or reimburse the State for any and all tuition received.

**Section 144** Section 1 of this Act provides funds for a Dietitian position in the Inpatient Mental Health (35-06-30). The purpose of this position is to allow the IPU to provide services by a registered Dietitian as required for certification. This position shall also provide dietitian services to the Terry Children's Psychiatric Center. The charges associated with food contracts between Inpatient Mental Health (35-06-30) and the Terry Children's Psychiatric Center for Fiscal Year 1998 shall be finalized by October 1, 1996.

**Section 145** Inpatient Mental Health maintains appropriation account 35-06-30-98-37 to receive reimbursement for providing a work study program for local nursing schools and for assigning residents to work in non-psychiatric services at area hospitals on a rotating basis, respectively. Notwithstanding the provisions of Title 29, Section 6102, Delaware Code, the Division shall be allowed to collect and expend the proceeds from the aforementioned accounts.

**Section 146** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Alcoholism, Drug Abuse and Mental Health, Alcoholism and Drug Abuse (35-06-40) in Contractual Services. In addition to this General Fund appropriation, the Director of the Division of Alcoholism, Drug Abuse and Mental Health, shall ensure that the amount of \$60 0 be expended from available federal funds to contract for employment, alcohol, and drug counseling and referral services for youth and adults to encourage an alcohol and drug-free environment in South Wilmington, and that the amount of \$35 0 be expended from available federal funds to contract for employment, alcohol, and drug counseling and referral services for youth and adults to encourage an alcohol and drug-free environment in the Claymont community.

**Section 147** Section 1 of this Act provides an appropriation for Contractual Services in the Department of Health and Social Services, Division of Alcoholism, Drug Abuse and Mental Health, Alcoholism and Drug Abuse (35-06-40). Of that amount \$120 0 shall be used to contract for the treatment and counseling for those Delawareans with gambling problems.

**Section 148** (a) The amount appropriated by Section 1 of this Act to the Department of Health and Social Services for Title XIX Federal Programs (Medicaid) - Other Than State Institutions shall be expended solely in accordance with the following conditions and limitations:

- (i) This appropriation shall be used for the purpose of continuing the program of medical assistance provided within the state plan under Title XIX of the Social Security Act and the requirement of Section 121(a) of P.L. 89-97 and all subsequent amendments enacted by the Congress of the United States and commonly known as Title XIX of the Social Security Act.
- (ii) The state plan of medical care to be carried out by the Department of Health and Social Services shall meet the requirement for Federal Financial Participation under the aforementioned Title XIX, and the sums expended by the department pursuant to this Act shall be limited to

Maternal and Child Health Services  
 Tuberculosis (TB)  
 Sexually Transmitted Diseases (STD)  
 Child Development Watch  
 Preschool Diagnostic and Development Nursery (PDDN)  
 Home Visits  
 Casual/Seasonal Nursing Services  
 Case Management for High Risk Pregnancies

Notwithstanding the provisions of Title 29, Section 6102, Delaware Code, the Division shall be allowed to collect and expend fees from the aforementioned accounts, except as noted below. Corresponding Appropriated Special Fund spending authority has been provided in Section 1 of this Act.

The Children with Special Needs and Child Health programs shall continue to deposit 30 percent of program collections to the General Fund.

**Section 133.** Section 1 of this Act includes an appropriation to the Department of Health and Social Services, Division of Public Health, Director's Office/Support Services (35-05-10) for Contractual Services. Of that amount, \$159,800 shall be used for the purpose of providing school nursing services three days a week to non-public schools in New Castle County and \$9.5 million for two schools in Kent County.

The Secretary of the Department of Health and Social Services will ensure that the contracts with the various schools in this program are executed no later than August 15 of each year. The Secretary will also ensure that timely payments are made to all contractors.

**Section 134.** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Public Health, Community Health (35-05-20), in the line item, "Office of Narcotics and Dangerous Drugs", in the amount of \$300,000. This amount shall be used at the discretion of the Drug Control Administrator and shall not be utilized for normal operating budget items attributed to the Office of Narcotics and Dangerous Drugs.

**Section 135.** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division of Public Health, Community Health (35-05-20), for Contractual Services. Of that amount, \$70,000 shall be available for medicine, equipment and part-time nursing services for a community-based adult health services clinic serving the Claymont area of New Castle County.

**Section 136.** A non-appropriated special fund revolving account is created in the Division of Public Health (35-05-20) for retention of contributions from private insurance companies to purchase immunization serum for the Universal Child Immunization Program. This shall be an interest bearing account.

**Section 137.** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division of Public Health, Community Health (35-05-20) for Contractual Services. Of that amount, \$65,000 shall be used to contract for mammography screening. These services shall be provided by the mobile mammography van. In addition to the above General Funds, \$19,000 shall be made available from the Preventive Health and Health Services Block Grant.

**Section 138.** Section 1 of this Act provides an appropriation of \$300,000 to the Department of Health and Social Services, Division of Public Health, Community Health (35-05-20) to provide hepatitis B vaccinations to individuals who are members of volunteer ambulance companies or volunteer fire companies as "first responders" in the State of Delaware. The Division of Public Health shall purchase vaccine and contract for the injection of vaccine at local fire stations or other sites mutually agreed upon by the fire companies and the Division of Public Health. No such vaccinations shall be furnished until after certification by the volunteer fire or ambulance company on a form provided by the Division of Public Health, indicating that the person for whom the vaccination is desired, is a member in good standing of a volunteer ambulance or volunteer fire company in the State of Delaware. A record of the names and addresses of all persons immunized shall be maintained by the Division of Public Health. To insure the success of this program, the Division of Public Health and representatives of the Delaware Volunteer Firemen's Association shall work collaboratively in the best interests of all parties. The Division of Public Health may promulgate reasonable rules and regulations regarding the vaccination of volunteer firemen and individuals who volunteer for ambulance companies.

**Section 139.** Section 1 of this Act includes the following appropriation to the Department of Health & Social Services, Division of Public Health, Emergency Medical Services (35-05-30) to implement the Statewide Trauma Care System: \$384,000 for Personnel Costs for 1.0 Trauma System Coordinator position and \$32.8 for Contractual Services. These funds shall not be spent unless House Bill No. 433 or a substitute for House Bill No. 433 of the 138th General Assembly is enacted into law. Should House Bill No. 433 or a substitute bill not be enacted into law, these funds shall revert to the General Fund.

**Section 140** The Department of Health and Social Services, Alcoholism, Drug Abuse and Mental Health (35-06-00) will be able to bill for additional Medicaid Revenue due to a waiver of the Institution for Mental Diseases exclusion, as part of the Medicaid Managed Care waiver. This additional revenue shall be deposited to the General Fund, and the division shall make every effort to ensure that these bills are submitted to the appropriate entities in an expeditious manner

**Section 141** Proposed trauma legislation guidelines promulgated through House Bill 433 of the 138th General Assembly or a substitute bill for House Bill No. 433 shall in no way commit the State to the provision of additional helicopter service to transport trauma victims to area hospitals

**Section 142** Section 1 of this Act provides General Funds in the amount of \$2,800 0 in the Department of Health and Social Services, Division of Alcoholism, Drug Abuse and Mental Health. This amount is supported by disproportionate share revenues of \$3,800.0 that are projected to be collected from the federal government during Fiscal Year 1997. The department shall deposit disproportionate share revenues to the General Fund and shall continue to maintain its efforts to ensure that the State receives its allotted disproportionate share payments from the federal government. The department shall report quarterly to the Budget Director and the Controller General on disproportionate share revenue received

**Section 143.** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Alcoholism, Drug Abuse and Mental Health, Inpatient Mental Health (35-06-30), for Contractual Services. Of that amount, \$41 2 shall be made available for a Nurse Intern Program to enable graduate nurses to take graduate courses to increase their skills in specialty areas

It is understood that participants in this program will provide clinical services with compensation to Delaware State Hospital during the duration of their graduate level education. It is further understood that these individuals shall remain in the employ of Delaware State Hospital for a minimum of one year after graduation or reimburse the State for any and all tuition received

**Section 144** Section 1 of this Act provides funds for a Dietitian position in the Inpatient Mental Health (35-06-30). The purpose of this position is to allow the IPU to provide services by a registered Dietitian as required for certification. This position shall also provide dietitian services to the Terry Children's Psychiatric Center. The charges associated with food contracts between Inpatient Mental Health (35-06-30) and the Terry Children's Psychiatric Center for Fiscal Year 1998 shall be finalized by October 1, 1998.

**Section 145** Inpatient Mental Health maintains appropriation account 35-06-30-98-37 to receive reimbursement for providing a work study program for local nursing schools and for assigning residents to work in non-psychiatric services at area hospitals on a rotating basis, respectively. Notwithstanding the provisions of Title 29, Section 6102, Delaware Code, the Division shall be allowed to collect and expend the proceeds from the aforementioned accounts

**Section 146** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Alcoholism, Drug Abuse and Mental Health, Alcoholism and Drug Abuse (35-06-40) in Contractual Services. In addition to this General Fund appropriation, the Director of the Division of Alcoholism, Drug Abuse and Mental Health, shall ensure that the amount of \$60 0 be expended from available federal funds to contract for employment, alcohol, and drug counseling and referral services for youth and adults to encourage an alcohol and drug-free environment in South Wilmington, and that the amount of \$35 0 be expended from available federal funds to contract for employment, alcohol, and drug counseling and referral services for youth and adults to encourage an alcohol and drug-free environment in the Claymont community

**Section 147** Section 1 of this Act provides an appropriation for Contractual Services in the Department of Health and Social Services, Division of Alcoholism, Drug Abuse and Mental Health, Alcoholism and Drug Abuse (35-06-40). Of that amount \$120 0 shall be used to contract for the treatment and counseling for those Delawareans with gambling problems.

**Section 148** (a) The amount appropriated by Section 1 of this Act to the Department of Health and Social Services for Title XIX Federal Programs (Medicaid) - Other Than State Institutions shall be expended solely in accordance with the following conditions and limitations

- (i) This appropriation shall be used for the purpose of continuing the program of medical assistance provided within the state plan under Title XIX of the Social Security Act and the requirement of Section 121(a) of P. L. 89-97 and all subsequent amendments enacted by the Congress of the United States and commonly known as Title XIX of the Social Security Act;
- (ii) The state plan of medical care to be carried out by the Department of Health and Social Services shall meet the requirement for Federal Financial Participation under the aforementioned Title XIX, and the sums expended by the department pursuant to this Act shall be limited to

- (1) Services mandated by the Health Care Financing Administration (HCFA) for receipt of Federal Financial Participation (FFP) under Medicaid Title XIX of the Social Security Act
- (2) Other licensed practitioners with limitations
- (3) Clinic services including Mental Health Clinics, Federally Qualified Health Centers, etc
- (4) Prescribed drugs with limitations
- (5) Services for individuals, age 65 or older, in institutions for mental disease
- (6) Intermediate care facility services for the mentally retarded (ICF/MR) or in Institutes for the Mentally Diseased (ICF/IMD)
- (7) Emergency hospital services
- (8) Transportation
- (9) Co-insurance and deductibles for Title XVIII and Title XIX recipients
- (10) Limited services in the following areas
  - (a) Prosthetic and orthotic devices.
  - (b) Diagnostic services, as defined in 42 CFR §440 Sub-part A and as limited by the Medicaid State Plan
- (11) Private duty nursing services with limitations
- (12) Nurse-midwife services
- (13) Services provided to eligible individuals in the home or community offered under a federal waiver pursuant to Section 2176 of the Omnibus Budget Reconciliation Act of 1981 as an alternative to institutionalization including but not limited to
  - (a) Case management
  - (b) Clinical support
  - (c) Day habilitation
  - (d) Residential habilitation
  - (e) Respite care
  - (f) Homemaker services
  - (g) Adult and medical day care
  - (h) Emergency response systems
  - (i) Medical equipment, supplies and appliances
- (14) Services provided to pregnant women and infants up to 185 percent of the federal poverty level, children up to the age of six, up to 133 percent of the poverty level, and children up through the age of 18 up to 100 percent of the federal poverty level shall be eligible to receive Medicaid Services in accordance with federal regulations
- (15) Services to eligible special needs children who are receiving an adoption subsidy from the Department of Services for Children, Youth and Their Families or a child who receives a IV-E adoption subsidy from another state, and who is residing in Delaware

- (16) Services to children who from birth are placed with private agencies for the purpose of adoption. Medicaid coverage will be from the date of birth until the child is placed with the prospective adoptive parent(s)
- (17) Extended services for pregnant women
- (18) Medicare premiums
- (19) Optional Medicaid Services-Rehabilitative Services
- (20) Additional services provided to eligible individuals in the home or community offered under an AIDS waiver as an alternative to institutionalization including
  - (a) routine dental services for adults
  - (b) intensive supervision and supplemental payment for children and adults in foster care
  - (c) private duty nursing.
  - (d) mental health services
- (21) Other medical or remedial care recognized under state law, that is identified as medically necessary for individuals under age 21 through the Early and Periodic Screening Diagnosis and Treatment (EPSDT) Program within limitations defined by the state's Medicaid Program
- (22) Optional Medicaid Services - Personal Care Services and other services defined in the federally approved state plan
- (23) Prescribed Pediatric Extended Care
- (24) Services provided as an alternative to more costly services, including, but not limited to
  - (a) Hospice services.
  - (b) Ambulatory Surgical Center services
- (25) Services of a pediatric or family nurse practitioner
- (26) Services provided to eligible Delawareans under federally approved 1115 waivers

(b) The amount appropriated by Section 1 of this Act to the Department of Health and Social Services for Title XIX - State Institutions shall be expended solely in accordance with the following conditions and limitations

- (1) Such appropriation shall be expended for the purpose of providing medical services to patients eligible under the Federal Title XIX Medicaid Program residing in various facilities of, or under the jurisdiction of, the Department of Health and Social Services.

(c) Funds appropriated by Section 1 of this Act for Title XIX OTSI or State Institutions may be expended by the Department of Health and Social Services for administrative costs involved in carrying out the purpose of this Section if approved by the Budget Director

(d) The funds hereby appropriated for Title XIX OTSI or State Institutions shall be expended only on condition that the program is approved and federal matching funds are provided by the appropriate federal agency

(e) Patients who reside in licensed nursing facilities or state facilities, and who receive services covered by the Medicaid program, shall be eligible for Medicaid if their income is no more than 250 percent of the Federal Supplemental Security Income (SSI) monthly payment standard and if they meet other eligibility requirements

(f) Certain disabled children, age 18 or under, who are living at home who would otherwise be eligible if they were in a medical institution for SSI or a state supplemental payment under Title XVI of the Social Security Act and, therefore, for Medicaid under the state plan

(g) Qualified Medicare Beneficiaries (QMBs) with incomes less than 100 percent of the federal non-farm poverty limit and resources less than two times the SSI resource limits are eligible only for Medicare premiums and Title XVIII co-insurance and deductibles.

(h) Specified Low-Income Medicare Beneficiaries (SLIBs) with incomes less than 120 percent of the federal poverty level and resources less than two times SSI resource limits are eligible for Medicare Part B premiums

**Section 149.** Section 1 of this Act appropriates certain sums for Alcoholism, Drug Abuse and Mental Health (35-06-00) Mental Retardation (35-11-00) and Public Health (35-05-00) for services that are eligible for federal Medicaid matching funds. The director of each division shall initiate a transfer of General Funds not later than July 30, 1996, of the following estimated amounts to Social Services (35-07-00), Medicaid - Other Than State Institutions: Alcoholism, Drug Abuse and Mental Health, \$1,250.00 for community services; Mental Retardation, \$1,500.00 for community-based waived services; and Public Health, \$90.00 for maternal and child health services. Adjustments to these estimated amounts to actual amounts shall be made during the last quarter of the fiscal year but prior to June 1, 1997.

**Section 150.** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division of Social Services (35-07-01) for "Renal Disease."

The Division of Public Health will provide the following support for the Chronic Renal Disease Program: 1) provide staff support for the Chronic Renal Disease Advisory Committee, including the maintenance of the committee membership and appointment system; 2) assist in developing programs and other public health initiatives designed to prevent chronic renal disease; 3) carry out educational programs for health professionals and the public to increase general knowledge of the prevention and treatment of chronic renal disease

The Division of Social Services will provide the following support for the Chronic Renal Disease Program: 1) develop standards for determining eligibility for services provided by the program, with the advice of the Advisory Committee; 2) extend financial assistance to persons suffering from chronic renal disease who meet eligibility criteria; 3) periodically provide information to the Advisory Committee on services provided and expenditures for these services. Those clients not Medicaid eligible will receive the same level of services as in previous years.

**Section 151.** There will be additional costs to the Department of Health and Social Services, Social Services (35-07-00), for processing claims associated with the Children's Services Cost Recovery Project (CSCRP). The Office of the Budget (10-02-00) will provide funding from CSCRP recoveries, as the first priority for payment, to pay for the state's one-quarter share of the processing charges.

**Section 152.** Section 1 of this Act makes an appropriation to the Department of Health and Social Services, Social Services (35-07-00), for Title XIX Federal Programs (Medicaid). Notwithstanding any provisions of the Delaware Code to the contrary, the Division shall deposit any drug rebate funds into the Social Service's Medicaid grant line.

**Section 153.** (a) Section 1 of this Act appropriates \$1,539.2 in Social Services (35-07-00) under Early Intervention to the Part H Birth to Three Program. The Interagency Resource Management Committee (IRMC) shall consult and advise the lead agency in setting program eligibility standards and shall have the authority to allocate such funds, and may advise on the use of other funds specifically designated for this project. The IRMC shall also have the authority to maintain up to 35.5 positions and establish or contract for an additional 4.0 positions needed to provide appropriate services for Children Birth to Three selected through the early intervention process and to ensure coordination with the Program for Children with Disabilities. In addition, the IRMC may recommend the transfer of General Fund positions and/or General Fund dollars from the Department of Health and Social Services as necessary to operate this program. The lead agency shall report to the Budget Director and the Controller General on additional revenues that will be generated from Medicaid matching funds for reimbursable appropriate services that will be deposited into the General Fund in Fiscal Year 1997.

(b) As required by Regulation (§303.521) under IDEA, there will be no charge to the parents for the following: (1) implementing the Child Find requirements in §303.321, (2) evaluation and assessment, as included in §303.322 and including the functions related to evaluation and assessment in §303.12, (3) service coordination as included in §303.22 and §303.344(g) and (4) administrative and coordinative activities related to the development, review and evaluation of IFSPs in §303.340 through §303.346 and to the implementation of the procedural safeguards in Subpart E and the other components of the state-wide system of early intervention services in Subparts D and F.

(c) The Secretary of the Department of Health and Social Services shall ensure that under the Part H Birth to Three Program, no child will be denied services because of his/her parent's inability to pay. The following will be adhered to by the Department of Health and Social Services in developing Part H/vendor agreements: 1) vendors will agree to bill Third Party Insurance including Medicaid and clients; 2) client fees will be based on the DHSS scale developed by the Ability to Pay Committee and found in the department's policy Memorandum 37, and 3) those agencies who have sliding payment scales currently will be

permitted to continue using them as long as those scales do not require a greater financial burden than that of the Department of Health and Social Services scale

(d) Management Services shall submit a monthly report to the Budget Director and the Controller General outlining the number of children screened and assessed by the program, the number of children receiving services, and the number of children transitioned out of the program

**Section 154** Section 1 of this Act includes 1 0 NSF FTE in the Department of Health and Social Services, Social Services (35-07-01) This Medicaid Eligibility Specialist position will be funded through voluntary contributions from the Medical Center of Delaware and from federal matching funds This position will expedite the Medicaid Eligibility application process for Medical Center clients, and will ensure that these clients apply for services through Medicaid, if appropriate, thereby maximizing federal revenues for the State of Delaware Other medical facilities throughout the state may participate in this program

**Section 155** For the Fiscal Year ending June 30, 1996, any sum in the Medicaid -- Non-State 1994 and 1995 appropriation (35-07-01-01-86) shall remain encumbered and shall not revert until June 30, 1997

**Section 156** The Secretary of the Department of Health and Social Services shall submit a quarterly report to the Budget Director and the Controller General separating departmental revenue estimates into categories related to the \$14,500 0 ASF for the Medicaid program in Social Services, (35-07-00), the \$1,166 3 ASF for child support programs in Child Support Enforcement, (35-10-00), the \$4,477 1 ASF for programs in Public Health (35-05-00), and the \$6,724 2 ASF for programs in Alcoholism Drug Abuse and Mental Health (35-06-00) This report will aid the Budget Director and the Controller General in determining if the projected revenue will support the Appropriated Special Fund accounts

**Section 157** The Department of Health and Social Services, Division of Social Services (35-07-01) is authorized to establish bank accounts to advance funds from the First Step program to clients in a timely manner These advances would be in the nature of clothing allowances, to advance client self-sufficiency, as proposed in Delaware's Welfare Reform plan "A Better Chance"

**Section 158** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division for the Visually Impaired (35-08-01), for Contractual Services Of that amount, \$8 0 shall be used to compensate correctional inmates for the purpose of producing Braille materials for visually impaired school children

**Section 159** Amend Title 29, Chapter 79, Section 7929, Delaware Code, referring to the Division for the Visually Impaired by designating the existing section (b) as (c) and inserting the following

(b) The Division for the Visually Impaired shall have the power to establish, monitor and oversee the operation of business programs for the purpose of providing training and employment for Delaware residents who are visually impaired These business programs may include but shall not be limited to vending, engraving, retail food services, meal preparation and distribution, concession stands and any other such business programs as may be deemed appropriate by the Director of the Division for the Visually Impaired Such programs shall be known as either Delaware Industries for the Blind or Business Enterprise Program

1) The Division for the Visually Impaired shall be authorized to promulgate rules and regulations to implement and operate the programs

These rules and regulations shall include, but not be limited to, provisions relating to participant eligibility, personnel management, fiscal controls, marketing plans and enforcement of production quality standards

2) Participants in the business programs shall be employees of a particular program and may continue in that program only pursuant to the rules of the program All participants shall adhere to the rules and regulations promulgated by the Division for the Visually Impaired

**Section 160** The State accepts the provisions and benefits of the Vocational Rehabilitation Act of 1973 (P L 93-112) as amended The Department of Health and Social Services shall act as the sole state agency with the Secretary of the Department as the State Officer, and Visually Impaired (35-08-00) as the Designated State Unit for all monies from the Act that are designated for persons with visual impairment and blindness, as defined in a Cooperative Agreement dated December 1985, between Visually Impaired and Vocational Rehabilitation (60-08-00), Department of Labor The department shall cooperate with the U S Department of Education, Rehabilitation Services Administration and, in accordance with all state laws, prepare the State Plan and carry out the Rehabilitation Act of 1973 and amendments thereto

**Section 161** Section 1 of this Act includes a one-time appropriation of \$50 0 to the Department of Health & Social Services, Division for the Visually Impaired for Braille textbooks or books on tape These funds shall not revert until June 30, 1998

**Section 162.** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Mental Retardation, Institutional Services (35-11-20) for Contractual Services. Of that amount, up to \$10.0 shall be available for services provided by Camp Barnes.

**Section 163.** Section 1 of this Act provides an appropriation of \$1,166.3 Appropriated Special Funds (ASF) in the Department of Health and Social Services, Child Support Enforcement (35-10-00), for the operation of the division. Revenue from child support collections shall fund this account and the related 17.4 ASF FTEs. The department shall continue its efforts to maintain collections related to child support programs, and all revenue in excess of the division's ASF authority shall be deposited as designated by Title 29, Section 6102 of the Delaware Code.

**Section 164.** The Division of Mental Retardation, Community Services (35-11-30) receives Medicaid reimbursement for the provision of day rehabilitation services provided in state operated day centers. Notwithstanding the provisions of Title 29, Section 6102 of the Delaware Code, the Division shall be allowed to collect and deposit the Medicaid reimbursement in an Appropriated Special Fund account entitled "Day Rehabilitation Services Reimbursement." Receipts in the account may be used to fund community residential and day program contracts currently funded out of the Purchase of Care and Purchase of Community Services lines.

**Section 165.** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Mental Retardation, Community Services (35-11-30), for Contractual Services to reimburse facilities to provide sheltered workshop services to clients while they are actively attending sheltered workshop programs. The Director of Mental Retardation shall submit a report detailing the various cost components of each facility's per diem to the Budget Director and the Controller General no later than December 1, 1996. The Director of Mental Retardation shall ensure that only reasonable and appropriate cost items shall be included in each facility's per diem. The reimbursement shall not in the aggregate exceed the appropriation amount in Fiscal Year 1997.

The Division is encouraged, where appropriate, to provide supported employment opportunities for these clients within the appropriation limit.

**Section 166.** The Division of Mental Retardation (35-11-30) is encouraged, where appropriate, to reallocate resources so as to maximize community-based residential placements for persons with mental retardation. Such reallocation initiatives have to be made within the total Division's appropriation limit with the approval of the Budget Director and the Controller General. These reallocation initiatives shall not compromise the standard of care of the remaining StockKey Center population.

**Section 167.** The Division of Mental Retardation, Institutional Services (35-11-30) receives a federal reimbursement for the purchase of wheelchairs. Notwithstanding the provisions of Title 29, Section 6102, Delaware Code, the Division shall be allowed to collect and deposit the federal reimbursement into an Appropriated Special Fund account entitled "Wheelchair Reimbursement." The account shall be used as a revolving fund to purchase additional wheelchairs.

**Section 168.** The Division of State Service Centers, Family Support (35-12-10) maintains appropriation accounts (35-12-10-80-00) and (35-12-10-80-02) for the purposes of lending car seats to families who cannot afford to buy them and to publish a Human Services Directory, respectively.

**Section 169.** The Division of State Service Centers, Service Center Management IPU (35-12-20), currently operates 12 facilities throughout the State for which a Tenant User Fee for service is charged to partially offset the cost of Service Center Operations. The holding account for this function is entitled "Facility Reimbursement."

Notwithstanding the provisions of Title 29, Section 6102, Delaware Code, the Division shall be allowed to collect and deposit to the aforementioned accounts. Corresponding Appropriated Special Fund spending authority has been provided in Section 1 of this Act.

**Section 170.** Section 1 of this Act provides an appropriation of \$461.6 for Energy in the Service Center Management IPU for reimbursement of energy costs associated with the center. Of this amount, \$26.0 is for the State Service Center in the new Appoquinimink High School.

**Section 171.** Community Services (35-12-30) is charged with the support of the Council on Hispanic Affairs. Members of the Council on Hispanic Affairs shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties.

**Section 172.** Section 1 of this Act makes an appropriation to the Department of Health and Social Services, State Service Centers, Community Services (35-12-30), for emergency assistance. Some of this appropriation may be used for programs of longer than 30 days duration.

**Section 173** The position of Director, Community Services, shall remain exempt from classified service until such time as the position becomes vacant

**Section 174** The Division of Services for Aging and Adults with Physical Disabilities (35-14-00) will receive Medicaid reimbursement for the administration of community based services for the Aging and Adults with Physical Disabilities population. Notwithstanding the provisions of Title 29, Section 6102, Delaware Code, the Division shall be allowed to collect and deposit the Medicaid reimbursement in an appropriated special fund account entitled "Community Based Services Reimbursement." Receipts in the account may be used to maintain existing services and provide additional services for adults with physical disabilities. Such services are not to exceed the estimated annualized revenue, and are subject to initial and on-going review by the Budget Director and the Controller General.

**Section 175** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities (35-14-01), for Contractual Services. Of that amount, \$35 0 shall be used to provide a Nautilus Program.

**Section 176** Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities (35-14-01), for Contractual Services. Of that amount, \$52 f shall be utilized for the Joining Generations Program.

**Section 177** Section 1 of this Act includes an appropriation to the Department of Health & Social Services, Division of Services for Aging and Adults with Physical Disabilities (35-14-01) for contractual services. Of that amount, \$200 0 shall be used for operating costs for the Brain and Spinal Injured facility in Sussex County. Should this facility not be constructed during FY 1997, these funds shall revert to the General Fund on June 30, 1997.

#### CHILDREN, YOUTH AND THEIR FAMILIES

**Section 178** The Secretary of the Department of Services for Children, Youth and Their Families shall keep the Budget Director and the Controller General well informed on a quarterly basis about any and all developments relating to the possible sale of any portion of the Ferns School property and any and all developments relating to the possible new use or sale of any portion of the Woods Haven-Kruse property.

**Section 179** For the fiscal year ending June 30, 1996, any unused ASF authority in the following accounts shall be considered continuing in nature and shall not be subject to Delaware Financial Management System (DFMS) appropriation file maintenance until June 30, 1997.

Fiscal Year	Account Codes	Remarks
1995	37-01-10	Environmental clean-up of Woods Haven-Kruse (APPR 9850)
1996	37-01-15	M/R (APPR 9899)
1995	37-01-50	Client Payments Automation (APPR 9850)
1995	37-05-50	Ferns Community Alarm System (APPR 9870)
1996	37-02-10	Kent County DFS Move (Appr 9887)

**Section 180** Section 1 of this Act provides appropriations to the Department of Public Education, Block Grants and Pass Through Programs (95-03-00), in the line items "Parent Early Education Center" and "Pregnant Students". To the extent needed by the Children's Trust Fund, these funds shall be used as a match for available federal funds for the Children's Trust Fund in the proportion necessary. They will not be available to match any other federal funds during Fiscal Year 1997.

Section 1 of this Act also provides appropriations to the Department of Services for Children, Youth and Their Families for Parent Education (training). To the extent needed by the Children's Trust Fund, these funds shall be used as a match for available federal funds for the Children's Trust Fund in the proportion necessary. They will not be available to match any other federal funds during Fiscal Year 1997.

These appropriations shall only be available for programs and services which are consistent with the broad range of child abuse and neglect prevention activities referred to in the Child Abuse Prevention and Treatment Act (P L 93-247). These appropriations shall be included in the Delaware Children's Trust Fund's application for matching federal funds under this Act.

**Section 181** The Department of Services for Children, Youth and Their Families generates Federal Financial Participation (FFP) revenue from a number of federal entitlement programs, most notably Medicaid, Title IV-E Foster Care, and Title IV-A Emergency Assistance for its covered activities. Section 1 authorizes ASF spending authority allowing the Department to retain a portion of said funds to be used to support cost recovery activities and improve children's services. On an annual

basis, the sum of \$3,000.0 shall be deposited to the General Fund. The Budget Director and Controller General may approve modification of this amount.

The ASF spending plan, with the concurrence of the Budget Director and the Controller General, may be modified to address any unforeseen operating shortfalls or critical one-time needs. In addition, the Budget Director and the Controller General may adjust the ASF authority under Section 1 of this Act to enhance the department's cost recovery initiatives in the event that new cost recovery opportunities are identified.

**Section 182.** For Fiscal Year 1997, the Division of Management Services (37-01-00) shall have 1.0 FTE exempt position in addition to those authorized by Title 29, Section 5903, Delaware Code. As position #55138 becomes vacant, it shall be classified by the Director of Personnel in accordance with the Merit System, Title 29, Chapter 54, Delaware Code.

**Section 183.** Position #065911 is hereby transferred from the Division of Youth Rehabilitative Services, Office of the Director (37-05-10) to the Delaware Statistical Analysis Center (10-07-03). Pursuant to the original intent for the position's authorization, activities of this position shall still remain exclusively focused on the Youth Rehabilitative Services juvenile population. This includes, but is not limited to, maintaining a juvenile population and movement database, conducting routine studies of this database and providing special forecasting analysis.

**Section 184.** Funds which are appropriated for foster care of children in Section 1 of this Act in the Department of Services for Children, Youth and Their Families, Family Services (37-02-00), are made available with the goal of limiting the number of children who remain in foster care for more than two years. For the year beginning October 1, 1996, the goal will be 220 children. This goal statement is intended to satisfy the requirements of the Federal Adoption Assistance and Child Welfare Act (P.L. 96-272).

**Section 185.** The Division of Family Services is hereby directed to formally notify, in advance, the Foster Care Review Board of any meeting, hearing or other event of which the Board desires notification. Said notification shall be directed to the Executive Director of the Board.

**Section 186.** Effective April 30, 1997, the 3.0 NSF FTEs within the Department of Services for Children, Youth and Their Families which are funded from the Family and Centers Empowered Together (FACET) federal grant shall become authorized by the General Fund. This shall be subject to approval from the Budget Director and Controller General.

**Section 187.** The Delaware Prevention Coalition Project funds 3.0 NSF FTE and \$650,000 NSF in the Office of Prevention (37-03-70). Should federal funding end, the Department of Services for Children, Youth and Their Families is authorized to use existing ASF funds, if available, to support the project until June 30, 1997. The 3.0 NSF FTE will be converted to 3.0 ASF FTE and remain authorized until June 30, 1997. These changes shall be subject to approval of the Budget Director and Controller General.

**Section 188.** The Secretary of the Department of Services for Children, Youth and Their Families shall certify to the Governor and the General Assembly that the mixing of adjudicated and non-adjudicated youths shall not take place in Ferris School.

**Section 189.** (a) During Fiscal Year 1997, the Department of Services for Children, Youth and Their Families, Division of Youth Rehabilitative Services (37-05-00), shall continue implementation of the Ferris School Restructuring Transition Plan. The intent of this plan is to implement a "normative culture" philosophy of treatment and operations which requires the current work force to undergo transition in order to do so. This may result in reclassification of positions upon vacancy, employee transfer to positions elsewhere in the department or with other state agencies, assistance with placement outside of state employment, assistance in educational development for eligible employees and/or any combination of the above. Reclassification of these vacant positions shall become effective upon signature of the State Personnel Director, the Budget Director and the Controller General.

(b) It is understood that employees identified by the Division as eligible for educational development assistance toward acquiring a relevant bachelor degree shall provide treatment and security services to the Ferris School, and/or its successor facility, with compensation for the duration of their undergraduate studies. Continuance in affected positions shall be contingent upon successful completion of such bachelor degree. Eligibility for educational development is defined as an individual with at least 30 college credits toward a bachelor's degree approved by the Division. It is further understood that these individuals shall remain in the employment of Ferris School or its successor facility, for a minimum of one year for each year (30 credits of educational tuition) after successful completion of such bachelor degree program. Such employees terminating employment or dismissed for cause prior to this service requirement shall be required to reimburse the State for any and all education monies paid on their behalf. Such reimbursement(s) may be recouped through, but not limited to, withholdings from final separation payments. Employees receiving educational assistance as a result of this transition plan shall sign an agreement to the stipulations outlined in this subsection.

**Section 190** The NSF appropriation line 37-05-50-80-04 established in FY 1996 shall remain authorized until June 30, 1997. This line will allow the Department of Children Youth and Their Families to receive reimbursements from employees who do not successfully complete Ferris work-force transition training.

**Section 191** Indications are that the excessive expenditure of casual/seasonal and overtime in the Division of Youth Rehabilitation Services, Secure Care (37-05-50) is being caused by high utilization of sick leave and incidences of tardiness, in addition to vacancy rates, training and transportation costs and the occasional use of correctional officers. As a means of monitoring and improving the problem areas, the Secretary of the Department of Services for Children, Youth and Their Families shall file a monthly report with the Budget Director and the Controller General on casual/seasonal and overtime expenditures. The report should include but not be limited to sick leave usage, incidence of tardiness, vacancy rates, training and transportation costs and the use of correctional officers at the Ferris School, New Castle County Detention Center and Stevenson House. The report should reflect all actions (including disciplinary) being taken to expeditiously correct the noted problem areas.

**Section 192** Section 1 of this Act includes an appropriation for Salary Contingency-Overtime in the Office of the Budget, Contingencies and One-time Items (10-02-04). Of that amount, the item amounting to \$305.8 for overtime in the Department of Services for Children, Youth, and Their Families, Division of Youth Rehabilitative Services, Secure Care (37-05-50) shall be transferred to the Department and used for overtime with the consent of the Budget Director and Controller General after the Department has demonstrated that every effort has been made to control and limit the use of overtime.

**Section 193** Section 1 of this Act consolidates the internal program units of Community-Based Services (37-05-30) and Alternatives to Incarceration (37-05-40). The funding for both internal program units is now located in the renamed internal program unit of Community Services (37-05-30).

In accordance with this consolidation, the Department of Services for Children, Youth and Their Families shall submit semi-annual reports to the Budget Director and the Controller General that detail the expenditures of this unit by dispositional guideline level, outlines the numbers of youth served by various programs within the unit and summarizes the personnel complement associated with each program within the unit. These reports shall be due on November 30, 1996, and May 30, 1997.

**Section 194** Section 1 of this Act provides an appropriation to the Department of Services For Children, Youth, And Their Families, Division of Youth Rehabilitation Services, Secure Care (37-05-50) for Contractual Services. Of that amount up to \$100.0 shall be used for pre-trial diversion in the Superior Court (02-03-10).

#### CORRECTION

**Section 195** During Fiscal Year 1997, the Department of Correction and the Department of Public Safety shall develop grant applications to solicit federal Crime Bill funds for the implementation of state programs. These programs may include but are not limited to operational funds for a Boot Camp, ten additional probation and parole officers, and four additional state troopers. Crime Bill funds, if secured, will be utilized to supplement General Funds authorized in the FY 1997 Budget Act. Should federal funds not be available or are not awarded for said purposes, the Budget Director and Controller General shall transfer the necessary funds from the Office of the Budget, Contingency and One-Time Items (10-02-04) Federal Contingency to the Department of Public Safety and the Department of Correction. In addition, up to 43.0 FTEs shall be authorized as follows: (38-04-04), 29.0 (38-06-02), 10.0, and (45-06-03), 4.0.

**Section 196** Section 1 of this Act includes funding for relief positions in the Human Resources & Development IPU of the Department of Correction (38-01-02). These positions shall be used primarily for training relief. The Department of Correction shall provide a quarterly report to the Budget Director and the Controller General detailing the non-training relief assignments of the staff training relief officers.

**Section 197** In addition to the positions authorized in Section 1 of this Act for the Department of Correction (38-00-00), additional positions are authorized in Human Resources & Development (38-01-02) for the purpose of training classes. During the training sessions, up to 30 positions will be made available to accommodate the class being trained. Funding is authorized to seed the first-time use of these 30 positions. In order to utilize these positions after the first time use, the department will use salary savings realized throughout the year.

**Section 198** Section 1 of this Act makes an appropriation for contractual services to the Department of Correction, Bureau of Management Services (38-01-10). Of this appropriation, \$35.0 shall be used to provide technical support to assist the Management Information Systems Unit.

**Section 199** Per Section 10 of this Act, reclassify Merit Position BP #7076 to exempt position in Department of Correction, Management Services (38-01-10), effective July 1, 1996.

**Section 200.** Section 1 of this Act provides an appropriation to the Department of Correction, Medical Services (38-01-30) Administration of the Medical Services contract shall be the responsibility of the Commissioner of Correction or his designee

**Section 201** The Department of Correction, Facilities Maintenance (38-01-40), receives funding for maintenance and restoration projects in the Budget Act. The department must submit a quarterly report to the Budget Director and the Controller General, detailing the expenditure of such funds and the respective projects. The department shall submit a preliminary plan for maintenance projects for Fiscal Year 1998 by October 30, 1996, to the Budget Director and the Controller General

**Section 202.** Section 1 of this Act appropriates the sum of \$14.0 in "gate money" or "release money" to the Department of Correction, Prisons, Bureau Chief - Prisons (38-04-01) The General Assembly intends that these funds be used for inmates, who upon their release, are financially unable to obtain transportation away from the facility. The funds thus appropriated shall be used for the express purpose of providing cash payments to eligible inmates: being released from an adult correctional facility and shall be expended as follows.

(a) Upon release, a prisoner who within 30 days prior to release has \$50.00 or more in his/her inmate account or accounts shall not be eligible for such payment, but shall be paid in cash the amount in his/her inmate account or accounts

(b) Upon release, a prisoner who has less than \$50.00 in his/her inmate account or accounts shall be paid in cash the amount remaining in his/her account or accounts and may be paid an additional sum sufficient to ensure transportation to his/her place of residence. Such sum sufficient, together with the funds available in the inmate account, shall not exceed \$50.00

(c) Any prisoner who, after using option (a) or (b) of said Section, has insufficient funds to provide a one-way bus ticket to his/her place of residence, shall forfeit all such funds and shall be provided with a one-way bus ticket to his/her place of residence, as well as sufficient funding to provide food during travel

**Section 203** Section 1 of this Act provides an appropriation for the Prison Arts Program funded in the Bureau Chief Prisons (38-04-01) Included in this appropriation is \$6.0 for Supplies and Materials, \$12.5 for Casual/Seasonal \$1.5 for Contractual Services and \$1.0 for Travel

**Section 204** Section 1 of this Act provides an appropriation for Personnel Costs to the Department of Correction Delaware Correctional Center (38-04-03) Included in this appropriation is \$15.0 for legal services as required by the Warden of Delaware Correctional Center

**Section 205** Section 1 of this Act provides an appropriation for Personnel Costs to the Department of Correction Delaware Correctional Center (38-04-03) Included in this appropriation is 1.0 position and Personnel Costs to allow the department to oversee a program to manufacture reading materials in Braille for the visually impaired

**Section 206.** Section 1 of this Act appropriates funds to (38-04-05) Contractual Services for a contract to provide a program for female offenders at BWCI to address anger and behavior issues from a feminine psychological perspective. The Warden of the facility will submit an annual report to the Joint Finance Committee, Budget Director, Controller General and Commissioner of Correction by June 1 of each year, which will include but not be limited to the mission of the organization, the statement of the problem, a synopsis of the program, the number of participants, statistics relating to recidivism rates of those participating in the program and an annual budget of the organization

**Section 207** Of the total positions authorized in Section 1 of this Act for the Multi-Purpose Criminal Justice Facility (38-04-06), the intent is to move five Correctional Officer positions to the Delaware Correctional Center (38-04-03) and five Correctional Officer positions to the Sussex Correctional Institution (38-04-04) upon the closing of all temporary dorm space at MPCJF

**Section 208** Section 1 of this Act makes an appropriation to the Department of Correction Prisons, Multi-Purpose Criminal Justice Facility (38-04-06), for Contractual Services. Of this appropriation, \$378.9 shall be used for the KEY program

**Section 209** (a) Of the total positions authorized in Section 1 of this Act for the Morris Correctional Institution (38-04-07), three positions shall be used to continue the existing highway beautification project

(b) Of the total positions authorized in Section 1 of this Act for the Delaware Correctional Center (38-04-03), four positions shall be used to continue the existing highway beautification project

(c) Of the total positions authorized in Section 1 of this Act for the Sussex Correctional Institution (38-04-04), four positions shall be used for a highway beautification project

(d) Section 1 of this Act also makes an appropriation for Contractual Services to Morris Correctional Institution (38-04-07). Of this amount, \$5 0 shall be used for "tipping" fees

Section 210 Section 1 of this Act provides an appropriation of \$145 3 and 4 4 General Fund positions to Prisons Office of Education (38-04-11) for the State to continue the federally-funded Life Skills Program This represents 5 people in 88 FTE positions for a total of 4 4 FTE's These positions, plus an additional 1 0 position are hereby authorized as non-appropriated Special Fund positions for the period July 1, 1996 through November 15 1996 After November 16, 1996, 4 4 of these positions shall be General Fund positions and the non-appropriated Special Fund authorization for 5 4 positions shall be rescinded

Section 211 The Department of Correction shall investigate the potential for transferring the responsibility for providing inmate education programs to other organizations in FY 1998 If such a transfer is to be implemented, employees currently employed in the Department of Correction, Bureau of Prisons Office of Education (38-04-11) shall be given the opportunity to apply for positions in other state agencies

Section 212 Section 1 of this Act makes an appropriation of \$437 9 to the Department of Correction, Community Corrections, Bureau Chief - Community Corrections (38-06-01) and \$370 6 to Department of Correction, Prisons, John L. Webb Correctional Facility (38-04-02), for various drug and alcohol treatment programs

The Secretary of Health and Social Services and the Commissioner of Correction or their designees, shall jointly participate in developing the appropriate Request for Proposals (RFPs) for contract services to provide drug and alcohol treatment Further, each department shall jointly participate in a Screening and Evaluation Team to determine levels of service required for each referral, as well as periodic review of all referrals All selected contract providers shall report on a regular basis to the Department of Correction on all follow-up regarding referrals to the various support programs

Section 213 Reclassify Merit Position BP #7770 to exempt position in Department of Correction, Bureau Chief-Community Corrections (38-06-01), effective July 1 1996

Section 214 Section 1 of this Act provides an appropriation to the Department of Correction Community Corrections (38-06-02) The department must submit a semi-annual report to the Budget Director and the Controller General that details the expenditure of these funds by SENTAC level (levels I, II and III) and the average personnel complement for each level These reports are due on December 31 and June 30

#### NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Section 215 Section 1 of this Act authorizes the Division of Fish and Wildlife, Wildlife/Fisheries (40-05-02) to spend up to \$3 083 9 in appropriated special funds Within this amount, the division is authorized to undertake capital expenditures to maintain/develop fish and wildlife recreational areas These expenditures should be in accordance with the Capital Development Plan for the division, submitted as an attachment to the department's Fiscal Year 1997 Capital Improvement Program Any deviation from the listed projects must be approved by the Budget Director and the Controller General

Section 216 Section 1 of this Act provides an appropriation to the Department of Natural Resources and Environmental Control Parks and Recreation Cultural and Recreational Services (40-06-03) for Contractual Services in Appropriated Special Funds Of that amount, \$5 0 shall be used to provide primitive camping services in State Parks for non-profit youth organizations and \$5 0 shall be used to provide park activities for senior citizens for special events and use of the Showmobile for non-profit organizations and municipalities

Section 217 The Department of Natural Resources and Environmental Control will provide the Joint Finance Committee with information on the actual cost of all Title V program activities, including permitting, enforcement and monitoring Reports on such information six months of activity will be submitted to the Joint Finance Committee by January 31 1997 and July 31 1997, respectively

Section 218 Section 1 of this Act appropriates \$103 3 to the Division of Water Resources, Watershed Assessment (40-08-07) for Inland Bays Research This appropriation shall be used to support citizen monitoring activities including, but not limited to, the Stream Watch Program in the amount of \$68 6 and the Inland Bays Citizens Monitoring Program in the amount of \$34 7

Section 219 Section 1 of this Act appropriates funds to the Division of Air and Waste Management (40-09-00) for the ARA III Program All ASF collected in this program shall be distributed to the Local Emergency Planning Committees

Section 220 The Department of Natural Resources and Environmental Control Division of Fish and Wildlife (40-05-06) is authorized to spend up to \$8 0 in existing Appropriated Special Funds for one-time cost to set up an enforcement facility in Sussex County

**Section 221.** Section 1 of this Act appropriates \$582.0 in General Funds and \$82.0 in Appropriated Special Funds for a dog control contract in the Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, (40-05-05). The recipient of this contract will be responsible for the enforcement of Title 7, Chapter 17 (Dogs), of the Delaware Code Beginning in the FY 1997 budget cycle, the Department of Natural Resources and Environmental Control will issue a Request for Proposal for this contract in New Castle County.

**Section 222.** Section 1 of this Act appropriates funds to support a position within the Department of Natural Resources and Environmental Control, Division of Air and Waste Management, Management and Support Section (40-09-01) This position is an Environmental Engineer III/IV and assigned to the Delaware City Petro Chemical Complex. This position will respond to and provide follow-up on complaints from the community on air quality throughout New Castle County. The position incumbent shall submit an annual report to the Joint Finance Committee on February 1st of each year which summarizes the complaints and activities of the previous calendar year.

**Section 223.** Section 1 of this Act appropriates \$200.0 for the Hazardous Substance Cleanup Loan Program for the Hazardous Substance Cleanup Fund, as authorized by Title 7, Subsection 9113(c)(6), Delaware Code.

**Section 224.** Prior to all new land acquisitions the Department of Natural Resources and Environmental Control will be required to provide cost estimates to the Joint Finance Committee. The cost estimates will include estimates to develop infrastructure, maintenance and the number of positions needed to maintain the land and the associated personnel costs.

**Section 225.** The Title V Operating Permit Program ASF holding account in Air and Waste Management Air Quality Management (40-09-02) shall be interest earning for the duration of the program.

**Section 226.** Section 1 of this Act appropriates \$83.0 from the Office of the Budget Contingency and One-Time Items (10-02-04) to the Department of Natural Resources and Environmental Control, Division of Parks and Recreation Operations and Maintenance (40-06-02), for the State Park Partnership. This program utilizes inmate labor for the purpose of renovating specific State park facilities while providing inmates with vocational training.

**Section 227.** Any expenditure or transfer of Penalty Fund Revenues must be approved by the State Budget Director and the Controller General. The Department shall submit quarterly reports on the progress of the expenditures and/or projects.

**Section 228.** The Division of Fish and Wildlife (40-05-00) is authorized to establish, maintain and administer

(a) An interest-bearing, non-appropriated special fund known as the Delaware Marsh Management and Maintenance Trust, as allowed by conditions of the DNREC/PSE&G Settlement Agreement of March 23, 1995. The interest income from this Trust Account will be dedicated to implement the Settlement Agreement's provisions to enhance or restore tidal wetlands habitats for coastal fish and wildlife resources along Delaware Bay and River in Delaware, and to maintain such tidal wetlands habitat enhancements or restoration in perpetuity, as partial compensation for natural resource losses caused by past, ongoing and future operation of the PSE&G Salem Nuclear Generating Station.

(b) A non-appropriated special fund for administration of the dedicated interest earned on the fund established in (a) above, with said dedicated interest to be expended to help support or implement compensatory tidal wetlands habitat enhancements or restorations and associated maintenance activities referred to in (a) above.

**Section 229.** The Department of Natural Resources and Environmental Control, Division of Air and Waste Management- Management and Support (40-09-01) is authorized to make one-time purchases from penalty fund revenues in the amount of \$64.0 ASF for two 4x4s and one cruiser enforcement vehicle, \$37.5 ASF for eight Laptop Computers and Software and \$46.0 ASF for safety equipment, protective clothing and boots. These items are to be used for enforcement activities.

**Section 230.** Section 1 of this Act appropriates \$40.0 in personnel costs to the Department of Natural Resources Division of Parks and Recreation, Operations and Maintenance Section (40-06-02) to fund casual and seasonal positions for Killens Pond Waterpark.

#### PUBLIC SAFETY

**Section 231.** The Department of Public Safety (45-00-00) is hereby authorized to continue the agreement between the Division of State Police (45-06-00) and Sussex County Council to provide up to 15 additional patrol officers in Sussex County.

In Section 1 of this Act, ASF authority has been provided to the Division of State Police, Patrol (45-06-03) in order to accommodate the match requirements stipulated by the agreement. In the event that the aforementioned agreement between the Division of State Police and Sussex County is terminated, this authority shall be deauthorized.

**Section 232** Section 1 authorizes the conversion of the 2 4 NSF FTEs within the Department of Public Safety, Division of State Police funded via the COPS More Program to General Funds (1 2 in 45-06-01 and 1 2 in 45-06-10) Each of these positions will retain its NSF funding status until such time as its respective available federal funding is depleted When this occurs notification shall be made to the Budget Director and the Controller General

**Section 233** Section 1 of this Act makes an appropriation to the Division of State Police, Executive (45-06-01) Included in this amount are funds for implementation of a Career Development Program Any adjustment received under this program will be added to base compensation and will be included to determine retirement benefits

**Section 234** The Division of State Police receives funds resulting from drug and other seizure activities If seizure is defined as being under federal jurisdiction, then the funds flow to State Police, Executive (45-06-01), as non-Appropriated Special Funds The Division shall submit a plan for the expenditure of these funds to the Budget Director and the Controller General This plan shall be updated quarterly A quarterly report as to the expenditure of such funds and to the respective projects shall be submitted to the Budget Director and the Controller General

**Section 235** In addition to the positions authorized in Section 1 of this Act for the Division of State Police (45-06-00) additional positions are authorized in Patrol (45-06-03) for the purpose of training State Police recruits During recruit training, up to 20 0 positions will be made available to accommodate the class being trained Funding is authorized for initial use of these positions to accommodate an anticipated graduating class of 15 troopers The Budget Director may authorize additional recruit positions accordingly

**Section 236** The positions transferred from Capitol Police (45-02-10) to the Division of State Police, Communications (45-06-10) as of July 1, 1995, shall remain in the classified service until such time as a vacancy occurs As vacancies occur the position(s) shall be made exempt from the classified service and shall be given merit system comparability in accordance with Section 11 of this Act

**Section 237** The 2 0 FTEs authorized as of July 1, 1995, for the Department of Public Safety, Division of Communication (45-01-20) were added as limited term positions These two positions and the 2 0 FTEs added by Section 1 of this Act shall be made permanent positions effective July 1, 1996

#### TRANSPORTATION

**Section 238** All state agencies are directed to remit payment for services rendered by the Department of Transportation within (30) days after receipt of invoice Services may include fuel billing, sign manufacturing, photocopies, specialized transit services etc Partial payments or estimated payments will not be permitted

**Section 239** Section 1 of this Act provides an appropriation of \$150 0 to the Office of the Secretary (55-01-01) for an Environmental Contingency account The department shall provide a quarterly report of potential liabilities and expenditures to the Office of the Controller General and Budget Office

**Section 240** The Delaware Transportation Authority budget, as set forth in memorandum form in Section 1 of this Act shall be expended in accordance with the following limitations

- (a) Debt Service estimates are for current project financing as authorized by Title 2, Chapter 13, Delaware Code
- (b) Funds provided for "Newark Transportation" are intended to cover the expenses of the public transportation system operated by the City of Newark The funds may be used to provide up to 100 percent of the total operating cost of the system during the year
- (c) Funds provided for "Kent/Sussex Transportation" are intended for continuation of transportation service for the elderly and handicapped in Kent and Sussex counties It is intended that management and direction of the service will reside with the Delaware Transit Corporation which may contract for services as they see fit, and that Kent County and Sussex County governments will review and approve allocation of the service levels within each county
- (d) It is intended that funds for "Taxi Service Support" will be maintained at least at the same service level as in the previous year It is intended that management and direction of these services shall reside with the Delaware Transit Corporation who may contract for this service as required
- (e) Funds of the Delaware Transit Corporation may not be provided as aids to local governments for transportation systems which restrict passengers because of residential requirements Nothing in this Section is meant to require that governments must operate these transportation systems outside their political boundaries

(f) Funds provided for "Transit Operations" are intended to include funding to allow the Delaware Transit Corporation or a private operator to continue to provide the present level of service to dialysis patients on normal service days during the hours offered in New Castle County by the Delaware Transit Corporation to the extent that such service does not place the Delaware Transit Corporation in violation of federal Americans with Disabilities Act

**Section 241** Section 1 of this Act makes an appropriation of \$527.7 to the Office of Planning (55-03-01) for Operations/Capital

(a) Of this amount, \$25.0 shall be used for infrastructure research and forums through the University of Delaware College of Urban Affairs and Public Policy. An additional \$25.0 shall be allocated for the purposes set forth in this Section to be funded from eligible Federal Funds. The activities funded by this appropriation shall be approved by the Secretary of the Department of Transportation.

(b) Of this amount, \$250.0 shall be used for the purposes of funding research programs of the Delaware Transportation Institute. Use of these program funds is subject to prior approval of the organizational structure, the research approach, and specific research projects of the Institute by the existing Policy Committee for the Institute, which shall include representation from the Department of Transportation, the University of Delaware, the Chairperson of the House Transportation and Infrastructure Committee, and the Chairperson of the Senate Highways and Transportation Committee and/or the Energy and Transit Committee.

**Section 242** Section 1 of this Act makes an appropriation to the Office of Financial Management and Budget (55-01-02) for Operations/Capital in the amount of \$1,453.9. Of this amount, \$20.0 shall be used for the Bicycle Helmet Bank Program to be administered as a joint project with the Department of Public Safety.

**Section 243** The Office of Information Services shall bill the Department of Transportation Office of Administration (55-02-01) on an actual usage basis.

**Section 244** Section 1 of this Act makes various appropriations from the Transportation Trust Fund for all transportation related operations:

(a) The Department shall promulgate and carry out the policies and procedures necessary to deauthorize any unexpended, unencumbered or unprogrammed operating appropriations remaining at the end of the fiscal year.

(b) The Department shall provide a list of operating appropriations to be continued into the next fiscal year to include the following: 1) unprogrammed appropriations from prior years, and 2) unencumbered or unprogrammed appropriations from the immediately preceding fiscal year. The list shall be comprised of the accounting code, fiscal year, and program description for each appropriation to be continued. The Department may request additional authority on a project by project to continue into the fiscal year. Such requests shall be submitted to the Budget Director and Controller General for approval.

**Section 245** Section 1 of this Act authorizes disbursement of \$5,273.0 in Transportation Trust Fund for the Office of Service General Obligation.

**Section 246** The Director, Division of Motor Fuel Tax, shall assume the same responsibilities as the Motor Fuel Tax Administrator as defined in Section 1331, Title 2 of the Delaware Code. When a vacancy occurs in the Director, Division of Motor Fuel Tax position, that position shall be made exempt from the classified service and shall be given a Merit System comparable in accordance with Section 11 of this Act. In addition to becoming an exempt position, the Director, Division of Motor Fuel Tax position, at such time as it becomes vacant shall be renamed as Motor Fuel Tax Administrator. All remaining positions within the former Division of Motor Fuel Tax shall maintain Merit System status.

**Section 247** Section 1 of this Act makes an appropriation in the amount of \$10,270.6 to the Division of Highway Operations, Expressways Operations/Toll Administration (55-04-90). Additionally, the Turnpike Operating Reserve Fund is authorized at \$864.6.

**Section 248** Section 1 of this Act appropriates \$10,270.6 to the Department of Transportation, Expressways Operations/Toll Administration (55-04-90). The appropriation for this unit may be allocated among the State's toll roads as follows:

Line Item	Toll Operations		Maintenance		Total
	1-95	SR-1	1-95	SR-1	
Personnel Costs	\$3,007.3	\$1,142.9	\$2,399.0		\$6,549.2
Energy	60.2	145.3	242.7		448.2
Capital Outlay	45.0	20.1	43.0		108.1
Contractual/Supplies	1,031.2	499.1	1,608.8		3,139.1

Travel	26 0			26 0
Total	\$4 169 7	\$1 807 4	\$4 293 5	\$10 270 6
Total Positions	93 0	38 0	2 0	203 0

Section 249 Section 1 of this Act makes an appropriation to the Bureau of Maintenance in the amount of \$2 000 0 to establish a Special Line called "Snow/Storm Contingency". This fund will provide for the expenses of weather/emergency operations up to its original balance of \$2 000 0 as set in Fiscal Year 1994. Notwithstanding any other provision of law to the contrary any sums in this account not expended by the end of a fiscal year shall be carried over for use in future fiscal years with appropriate transfers to current fiscal year accounts. The department shall be allowed to transfer funds from this account to divisions on an as needed basis for expenditures incurred. The department may also transfer funds to municipalities to reimburse them pursuant to contracts entered into by the department and the municipality to keep transit routes open during snow and storm emergencies. The transfer of funds from this account shall not require the approval of the Budget Director or the Controller General. The department must provide a semi-annual expenditure report on or before May 1 and November 1 of each fiscal year.

Section 250 In order to integrate the Turnpike Accounting System with the Department of Transportation and State Accounting Systems all funds previously appropriated under Section 1 of this Act to the Delaware Turnpike Administration (55 04 90 101 6800 96) which remain programmed by the Department of Transportation as of June 30 1996 shall be deauthorized in the Turnpike Accounting System and carried forward into Fiscal Year 1997 and accounted for in the State of Delaware Accounting System under the following code 55 04 90 101 6800 96. These funds shall continue to be carried forward until fully expended for their originally intended purpose or reverted in accordance with the Delaware Department of Transportation Reversion Policy. All other unexpended balances remaining at the Delaware Turnpike Administration as of June 30 1996 shall revert to the Transportation System Fund.

LABOR

Section 251 (a) Section 1 of this Act provides an appropriation of \$235 2 to Employment and Training Training Services (60 09 20) for the Delaware State Summer Youth Employment Program to operate a ten week program commencing July 1 1996. This sum is to be allocated in the following manner:

New Castle County (outside the City of Wilmington)	\$ 70 4
City of Wilmington	70 4
Delaware County	47 0
Sussex County	47 0
Total	235 2

(b) Notwithstanding any other provision of the Delaware Code to the contrary youths chosen for work under this program shall be less than 14 years of age nor more than 20 years of age (except that work leaders may be 21 years of age) and shall be required to provide evidence of same before becoming eligible. All youths participating in the state assisted program shall be required to present a letter from their parents or guardian indicating their consent to work and also releasing the State of Delaware and the sponsoring agency from any liability for assignments in the low risk jobs that will be available.

(c) Preference shall be given to those youths who are members of single parent households whose income does not exceed \$10 000 annually and applicants who qualify based upon parental income guidelines for two parent households of \$25 000 or less. Within the income limits provided for participation in the State Summer Youth Employment Program consideration may be given to the applicants at a ratio of at least eight applicants qualified on income to three persons considered beyond the income limit.

(d) Any not profit or tax exempt organization certified by the Department of Labor may be authorized to be a sponsoring agent in the state assisted youth work program.

(e) Sponsoring agents shall be required to submit a plan or project of activity of meaningful and productive work experience and shall submit details as the Department shall deem necessary before becoming eligible as a sponsoring agent.

(f) The sponsoring agent shall provide one work leader for each 20 youths employed in the program to supervise and monitor the attendance and work performance of the youths selected for the program. Work leaders shall be paid no more than \$5 000 per year and shall work no longer than eight hours per day and five days per week.

In each of the political subdivisions wherein funds have been appropriated, no more than \$2.0 shall be extended for administrative purposes and no more than \$1.0 shall be expended for equipment, supplies and mileage.

A record of all equipment and supplies purchased with funds herein appropriated shall be kept by the sponsoring agent, and at the conclusion of the ten-week program such supplies and equipment shall be reverted to the Department of Labor

**Section 252.** The funds appropriated for the Delaware State Summer Youth Employment Program shall not be co-mingled with funds appropriated from any other source. The guidelines for youth employment and administrative costs for all persons employed in the State Summer Youth Employment Program shall be based in accordance with prior years' practice of payment for services.

#### AGRICULTURE

**Section 253.** During Fiscal Year 1997, the Department of Agriculture is directed to pay the Thoroughbred Racing Commission members' annual salaries from the Personnel Costs line of the Administration IPU (65-01-01)

**Section 254.** Fees collected by the Thoroughbred Racing Commission since January 1, 1996 shall be deposited into the General Fund

**Section 255.** Fees collected by the Harness Racing Commission since January 1, 1996, shall be deposited into the General Fund.

**Section 256.** Notwithstanding Section 255, all fees collected to cover the cost of fingerprinting and criminal history checks for the Harness Racing Commission shall be deposited into the Harness Racing Commission (65-01-05), Fingerprinting and Criminal History line item. No more than \$30.0 shall be expended from that fund and no funds within this line can be used for any other purpose

**Section 257.** Notwithstanding Section 254, all fees collected to cover the cost of fingerprinting and criminal history checks for the Thoroughbred Racing Commission shall be deposited into the Thoroughbred Racing Commission (65-01-10) Fingerprinting and Criminal History line item. No more than \$49.0 shall be expended from that fund and no funds within this line can be used for any other purpose.

#### ELECTIONS

**Section 258.** Section 1 of this Act includes one-time appropriations to the Departments of Election (70-00-00) Of those amounts, the one-time items CY 1996 Elections & Primaries for New Castle County (70-02-01), Kent County (70-03-01) and Sussex County (70-04-01) include \$124.0, \$44.4, and \$29.0 respectively for salary increases for election officers

#### FIRE PREVENTION

**Section 259.** During the first six months of Fiscal Year 1997, the State Fire School may borrow a sum not greater than \$50.0 ASF from the State Fire Marshal's Office available Appropriated Special Fund revenues. This will permit the State Fire School to operate during the beginning of the fiscal year when its revenue balance is low. The State Fire School shall repay the borrowed amount as revenues allow, but must fully reimburse the State Fire Marshal's Office by June 30, 1997

**Section 260.** Section 1 of this Act provides an appropriation of \$75.0 to the State Fire Prevention Commission (75-03-01) in the line item "State-wide Fire Safety Education". These funds are to be matched by members of the Delaware Association of Volunteer Firemen and are to be used for the purpose of operating a State-wide Fire Safety Education Program

**Section 261.** Of the funds appropriated in Section 1 of this Act to the Fire Prevention Commission (75-03-01) in the line item "Contingency - Extraordinary Expenses", an amount not to exceed \$20.0 may be used to reimburse volunteer fire companies which incur extraordinary expenses. These funds may be disbursed to volunteer fire companies only for extraordinary expenses at the discretion of the Fire Prevention Commission upon the request of a volunteer fire company. An extraordinary expense under the provisions of this Act shall be defined as those expenses for which a volunteer fire company would not normally prepare for in its company budget and are not covered by said company's own private insurance

**Section 262.** Section 1 of this Act appropriates \$5.0 to the State Fire Marshal's Office (75-01-01) for the purchase of smoke detectors.

#### NATIONAL GUARD

**Section 263.** Section 1 of this Act provides an appropriation to Delaware National Guard

(76-01-01) for Energy Within this appropriation, sufficient energy funds are included to defray energy expenses of the Lora Little School building that are not directly attributable to occupancy by the Delaware National Guard

### HIGHER EDUCATION

**Section 264** (a) Section 1 of this Act provides an appropriation for "Operations" of the University of Delaware (90-01-01) and an appropriation for "Operations" of the Delaware Geological Survey (90-01-02) This figure includes total state assistance for University operations costs as well as funds required to be appropriated by Title 29, Section 5505(b), Delaware Code The appropriation for "Operations" of the University of Delaware includes \$2,081.8 for energy

(b) The University of Delaware shall pay on a regularly scheduled basis as determined by the Secretary of Finance to the State Treasurer, at a rate determined under Title 29, Section 6340, Delaware Code, or otherwise by the Secretary of Finance, the amount of all fringe benefits applicable to salaries and wages paid to employees of the University of Delaware as the term "employee" is defined in Title 29, Sections 5501(a) and 5505, Delaware Code, or any other fringe benefit costs applicable to the University of Delaware.

(c) Section 1 of this Act provides an appropriation for "Operations" of the University of Delaware (90-01-01) included in that appropriation is the increased amount for library books of \$150 0.

**Section 265** Section 1 of this Act appropriates amounts for "Scholarships", "Agricultural Programs" and "Other Programs" to the University of Delaware (90-01-01) Those amounts shall be allocated as follows

<b>Scholarships</b>		
General	\$ 1,432 1	
Scholarships		1,289 0
Minority Student Recruitment		1,114 1
Aid-to-Needy Students		897 9
Governor's Scholars Program		416 0
Student Employment Program		136 9
Academic Incentive		<u>114 6</u>
Total		\$ 5,400 6

<b>Agricultural Programs</b>		
Agricultural Experimental Station	\$ 292 6	
Agricultural Cooperative Extension		518 6
Agricultural Research & Education Center		20 0
Poultry Disease Research		414 5
Crop Extension 115 7		
Agricultural Environmental Quality		41 8
Soil Testing and Pesticide Control		169 9
Diagnostic Poultry Program		<u>58 5</u>
Total		\$ 1,631 6

<b>Other Programs</b>		
Sea Grant	\$ 395 3	
Summer School for Teachers		386 0
Urban Agent Program		106 3
Public Service and Applied Research Projects		156 2
Research Partnership Fund		1,142 4
Afro-American and Other Minority Person Recruitment		226 2
Pike Creek Greenway		50 0
Financial Services Center		27 5
Local Government Research and Assistance		66 6
Graduate Education (Southern Delaware)		63 0
Library Automation		50 0
MALS/BALS - Southern Delaware		54 6
Nurse Practitioner		211 4
Science, Engineering and Technology Service Program		33 6
Management Training and Technical Assistance		52 5
Molecular Biology/Biotechnology Program		80 0
Math/Science Education for DE Teachers		<u>297 0</u>
Total		\$ 3,398 6

In each of the political subdivisions wherein funds have been appropriated, no more than \$2.0 shall be extended for administrative purposes and no more than \$1.0 shall be expended for equipment, supplies and mileage.

A record of all equipment and supplies purchased with funds herein appropriated shall be kept by the sponsoring agent and at the conclusion of the ten-week program such supplies and equipment shall be reverted to the Department of Labor

**Section 252.** The funds appropriated for the Delaware State Summer Youth Employment Program shall not be co-mingled with funds appropriated from any other source. The guidelines for youth employment and administrative costs for all persons employed in the State Summer Youth Employment Program shall be based in accordance with prior years' practice of payment for services

#### AGRICULTURE

**Section 253.** During Fiscal Year 1997, the Department of Agriculture is directed to pay the Thoroughbred Racing Commission members' annual salaries from the Personnel Costs line of the Administration IPU (65-01-01)

**Section 254.** Fees collected by the Thoroughbred Racing Commission since January 1, 1996, shall be deposited into the General Fund.

**Section 255.** Fees collected by the Harness Racing Commission since January 1, 1996, shall be deposited into the General Fund.

**Section 256.** Notwithstanding Section 255, all fees collected to cover the cost of fingerprinting and criminal history checks for the Harness Racing Commission shall be deposited into the Harness Racing Commission (65-01-05). Fingerprinting and Criminal History line item. No more than \$30.0 shall be expended from that fund and no funds within this line can be used for any other purpose.

**Section 257.** Notwithstanding Section 254, all fees collected to cover the cost of fingerprinting and criminal history checks for the Thoroughbred Racing Commission shall be deposited into the Thoroughbred Racing Commission (65-01-10). Fingerprinting and Criminal History line item. No more than \$49.0 shall be expended from that fund and no funds within this line can be used for any other purpose

#### ELECTIONS

**Section 258.** Section 1 of this Act includes one-time appropriations to the Departments of Election (70-00-00) Of those amounts, the one-time items CY 1996 Elections & Primaries for New Castle County (70-02-01), Kent County (70-03-01) and Sussex County (70-04-01) include \$124.0, \$44.4, and \$29.0 respectively for salary increases for election officers

#### FIRE PREVENTION

**Section 259.** During the first six months of Fiscal Year 1997, the State Fire School may borrow a sum not greater than \$50.0 ASF from the State Fire Marshal's Office available Appropriated Special Fund revenues. This will permit the State Fire School to operate during the beginning of the fiscal year when its revenue balance is low. The State Fire School shall repay the borrowed amount as revenues allow, but must fully reimburse the State Fire Marshal's Office by June 30, 1997

**Section 260.** Section 1 of this Act provides an appropriation of \$75.0 to the State Fire Prevention Commission (75-03-01) in the line item "State-wide Fire Safety Education". These funds are to be matched by members of the Delaware Association of Volunteer Firemen and are to be used for the purpose of operating a State-wide Fire Safety Education Program

**Section 261.** Of the funds appropriated in Section 1 of this Act to the Fire Prevention Commission (75-03-01) in the line item "Contingency - Extraordinary Expenses", an amount not to exceed \$20.0 may be used to reimburse volunteer fire companies which incur extraordinary expenses. These funds may be disbursed to volunteer fire companies only for extraordinary expenses at the discretion of the Fire Prevention Commission upon the request of a volunteer fire company. An extraordinary expense under the provisions of this Act shall be defined as those expenses for which a volunteer fire company would not normally prepare for in its company budget and are not covered by said company's own private insurance

**Section 262.** Section 1 of this Act appropriates \$5.0 to the State Fire Marshal's Office (75-01-01) for the purchase of smoke detectors.

#### NATIONAL GUARD

**Section 263.** Section 1 of this Act provides an appropriation to Delaware National Guard

(76-01-01) for Energy Within this appropriation, sufficient energy funds are included to defray energy expenses of the Lora Little School building that are not directly attributable to occupancy by the Delaware National Guard

#### HIGHER EDUCATION

Section 264 (a) Section 1 of this Act provides an appropriation for "Operations" of the University of Delaware (90-01-01) and an appropriation for "Operations" of the Delaware Geological Survey (90-01-02) This figure includes total state assistance for University operations costs as well as funds required to be appropriated by Title 29, Section 5505(6), Delaware Code The appropriation for "Operations" of the University of Delaware includes \$2,081.8 for energy

(b) The University of Delaware shall pay on a regularly scheduled basis as determined by the Secretary of Finance to the State Treasurer, at a rate determined under Title 29, Section 6340, Delaware Code, or otherwise by the Secretary of Finance, the amount of all fringe benefits applicable to salaries and wages paid to employees of the University of Delaware as the term "employee" is defined in Title 29, Sections 5501(a) and 5505, Delaware Code, or any other fringe benefit costs applicable to the University of Delaware

(c) Section 1 of this Act provides an appropriation for "Operations" of the University of Delaware (90-01-01) included in that appropriation is the increased amount for library books of \$150.0

Section 265 Section 1 of this Act appropriates amounts for "Scholarships", "Agricultural Programs" and "Other Programs" to the University of Delaware (90-01-01) Those amounts shall be allocated as follows

##### Scholarships

General	\$ 1,432.1	
Scholarships		1,289.0
Minority Student Recruitment		1,114.1
Aid-to-Needy Students		897.9
Governor's Scholars Program		416.0
Student Employment Program		136.9
Academic Incentive		114.6
Total	\$ 5,400.6	

##### Agricultural Programs

Agricultural Experimental Station	\$ 292.6
Agricultural Cooperative Extension	518.6
Agricultural Research & Education Center	20.0
Poultry Disease Research	414.5
Crop Extension	115.7
Agricultural Environmental Quality	41.8
Soil Testing and Pesticide Control	169.9
Diagnostic Poultry Program	58.5
Total	\$ 1,631.6

##### Other Programs

Sea Grant	\$ 395.3
Summer School for Teachers	386.0
Urban Agent Program	106.3
Public Service and Applied Research Projects	156.2
Research Partnership Fund	1,142.4
Afro-American and Other Minority Person Recruitment	226.2
Pike Creek Greenway	50.0
Financial Services Center	27.5
Local Government Research and Assistance	66.6
Graduate Education (Southern Delaware)	63.0
Library Automation	50.0
MALS/BALS - Southern Delaware	54.6
Nurse Practitioner	211.4
Science, Engineering and Technology Service Program	33.6
Management Training and Technical Assistance	52.5
Molecular Biology/Biotechnology Program	80.0
Math/Science Education for DE Teachers	297.0
Total	\$ 3,398.6

**Section 266** Section 1 of this Act appropriates \$1,142,400 for the "Research Partnership Fund" at the University of Delaware, subject to the following:

- (a) This appropriation shall be used to match, on a dollar-for-dollar basis, grants or contracts from private industry to conduct cooperative research with the University. The objective of the cooperative research efforts shall be to attract new high technology research facilities and industries to locate within the State of Delaware.
- (b) This appropriation shall be used to match "new" money and cannot be allocated to any projects in progress.
- (c) The University President shall submit to the Governor, members of the General Assembly, the Budget Director and the Controller General, within 120 days after the close of each fiscal year, a report containing an account of how these funds were expended, what new industrial research organizations were attracted to the State, and plans for the ensuing fiscal year.

**Section 267** Section 1 of this Act provides an appropriation to the University of Delaware (90-01-01) for Agricultural Programs. Within that appropriation are sufficient funds to fully fund 3.0 Agricultural Extension Agents in New Castle County, 2.0 Agents in Kent County and 2.5 Agents in Sussex County.

**Section 268** Section 1 of this Act appropriates \$1,650,000 to the Delaware Institute of Medical Education and Research (90-02-01). This amount shall be allocated as follows:

Jefferson Medical College	\$1,000,000
University of Delaware	50,000
Medical Center of Delaware	200,000
Scholarships/Loans	400,000
	\$1,650,000

Any changes in this allocation must receive prior approval from the Budget Director and the Controller General.

The scholarship loan allocation of \$400,000 as identified above is to be used to provide financial assistance in the form of loans for students attending Jefferson Medical College and allocated by the DIMER Board. Beginning July 1, 1993, persons receiving loans who had not previously received loans shall be required to repay those loans. Persons who first received scholarships before July 1, 1993, may voluntarily elect to participate in the loan program. These loans shall be repaid under terms and conditions that will be set by the Delaware Higher Education Commission who shall be responsible for the record keeping. Loan recipients may discharge their repayment obligation by agreeing to serve in Delaware providing primary care services, not including residency training, such as pediatrics, internal medicine, family medicine or obstetrics/gynecology. The service obligation shall be calculated so as to make equal the ratios represented by the loan to the annual tuition and the term of service to a calendar year.

**Section 269**, Senate Bill 418 of the 138th General Assembly proposes the transfer of administration of the DIMER Program. Should this legislation be enacted, the Budget Office is hereby directed to adjust the FY 1997 Budget accordingly.

**Section 270** Section 1 of this Act makes an appropriation to Delaware State University (90-03-01) for General Scholarships. Of that amount, \$220,000 shall be for state scholarships for high ability students and \$20,000 shall be for departmental scholarships to attract high achievers into the sciences.

**Section 271** For the fiscal year covered by this Act, in order to continue the assessment of procedures implemented during Fiscal Year 1993 intended to reduce the administrative burden incurred as a result of processing accounting transaction data into two independent accounting systems, the Budget Director has authorized Delaware State University to:

- (a) Discontinue detail data input to the Delaware Financial Management System (DFMS) for encumbrance and vendor payment transactions related to General Fund, federal financial assistance and college funds.
- (b) Effect vendor payment disbursements of the above identified funds on Delaware State University checks, generated through the University Accounting System and drawn on a University bank account.
- (c) Summarize General Fund and federal financial assistance fund disbursements on a weekly post-disbursement basis and draw down the corresponding amounts through the standard DFMS Payment Voucher process.

This authorization does not provide for any change to the processing of encumbrances and vendor payment transactions related to Bond/Capital funds; it does not affect payroll processing and does not relax or alter any control requirements prescribed by law or policy related to procurement, encumbrance and payment activity.

The University shall comply with specific procedures developed and prescribed by the Office of the Budget and the Department of Finance, Division of Accounting. In addition, the University shall cooperate fully with the Office of Auditor of Accounts to aid in any review or examination of the University's accounting procedures, records and system.

Operations as enabled by this section shall be periodically reviewed and evaluated during the stated period by the Office of the Budget, the Department of Finance and the Office of Auditor of Accounts. Any procedural/control weaknesses identified shall be addressed and resolved, and this authority may be withdrawn for cause at any time during the stated period, with the allowance that Delaware State University will be provided reasonable time to revert to standard processes.

**Section 272** Section 1 of this Act provides an appropriation to Delaware Technical and Community College, Office of the President (90-04-01) for Parallel Program Operations and Parallel Program Academics. This appropriation is to assist in the provision of the Delaware Technical/University of Delaware Parallel Program which will be operated jointly by the two institutions under a two-year contract initiated by Delaware Technical and Community College. Under this contract, the University of Delaware will teach students at Delaware Technical and Community College's facilities. Future budget requests will be made jointly by Delaware Technical and Community College and the University of Delaware, and budget cuts, if necessary, will be shared on a pro rata basis. Approval of tuition and other fees will be made by the Board of Trustees of the institution that delivers the relevant service and after the institutions have reached an agreement for tuition sharing. Representatives from both institutions will meet at least once each semester to review program operations.

**Section 273** The line item Subvention, in Section 1 of this Act, Delaware Institute of Dental Education and Research (90-08-01) as provided by Title 14, Chapter 88, Delaware Code, provides for three dental internships and sufficient funds to contract with Delaware State Hospital (Inpatient Mental Health) to continue the Dental Internship Program. This program also will serve clients in the Community Mental Retardation Program.

**Section 274** Section 1 of this Act contains an appropriation of \$40,000 for the Delaware Institute for Veterinary Medicine (90-07-01). Notwithstanding current Laws of Delaware relating to the DIVME Program, these funds shall be used to provide tuition support for up to 3 persons per year at Virginia Polytechnic Institute for Delaware residents applying to veterinary school.

#### PUBLIC EDUCATION

**Section 275** At the end of Fiscal Year 1996, all Division II - All Other Costs, Division II - Energy and Division III - Equalization Funds shall become a continuing appropriation in each local school district for the period of one fiscal year. The provisions of this Section shall apply only if the end of year balance is greater than \$250,000 in an individual appropriation line.

**Section 276** Section 1 of this Act reduces the NSF position complement by 13.0 FTEs for Public Education, State Board of Education and State Board of Education for Vocational Education and Department of Public Instruction (95-01-01). This reduction is due to a loss of federal funding for various federal grant programs. The Department of Public Instruction is hereby authorized to retain these positions with NSF funding status until such time as its respective available federal funding is depleted.

**Section 277** Section 1 of this Act authorizes positions for Public Education, School District Operations, Division of Public Instruction (95-02-01). This number is an estimate of state funded positions, including all administrators, teachers, custodians, secretaries, cafeteria workers, aides and other state funded positions associated with pass through programs through the Department of Public Instruction. In addition to these state funded positions, it is estimated that there will be approximately 175.6 FTE locally funded positions and 591.9 FTE federally funded positions in the school districts of the State in Fiscal Year 1997.

**Section 278** Amend Section 1321, Subsection (10), Title 14, Delaware Code by striking the number "11" as it appears therein and inserting in lieu thereof the number "12".

**Section 279** The positions included in Section 1 of this Act that are authorized to the Department of Public Instruction shall be assigned in the manner shown on the Team Organization Chart dated May 14, 1993 and as subsequently amended by the FY 1995 and FY 1996 Budget Acts. For the fiscal year ending June 30, 1997, the pre-approved changes include the elimination of the Technology Team within the Standards and Curriculum Branch due to the transfer of staff to the Delaware Center for Instructional Technology. In addition, the Department is authorized to reclassify position number 016360, previously assigned to the DPI library, for the purpose of authorizing a Public Information Officer position which shall be assigned to the Superintendent Office. To the extent necessary, the Department is authorized a dual incumbency in this position until November 15, 1996.

In order to complete the review of staffing patterns referenced in the first paragraph of this section, the Department is directed to work with the Office of State Personnel and the Budget Office in order to evaluate the existing staffing patterns and classifications. This effort shall include a detailed review of the job functions currently performed by existing staff and the development of recommendations that will support better alignment between staffing practice and the organizational mission of the Department.

The product of this effort shall be submitted to the Joint Finance Committee for its review upon completion and acceptance by the State Board. During the interim period, the State Board of Education shall continue to obtain prior approval of the Budget Director and the Controller General before reclassifying or upgrading any position.

**Section 280.** For the purpose of promoting a thorough review of the Department of Public Instruction staffing patterns and the extent to which they are aligned with the needs of the Public Education system, the provisions of §121(3) and (4) Title 14, Delaware Code, relating to the requirement to provide notice of non-renewal six months prior to the expiration date of the contracts of professional certificated staff persons and officers is hereby waived. During the fiscal year ending June 30, 1997, such notice shall be provided not later than four months prior to the expiration date of such contracts, provided however that any person so notified will automatically be entitled to a 2-month extension of their existing contract in order that they still may be afforded a total of six months notice.

**Section 281.** The State Board of Education and the Department of Public Instruction shall continue to provide funding through its discretionary federal special education funds for the local share of education costs associated with prison inmates aged 18 to 21 years, who qualify as special education students

**Section 282.** For Fiscal Year 1997, the inflation factor for the local per pupil payments required under the state's Enrollment Choice Program, as specific in Title 14, Section 408(e), Delaware Code, and for the local per pupil payments required under the state's Charter School Program, as specified in Title 14, Section 509(d), Delaware Code, shall be 2.0 percent

**Section 283.** Section 1 of this Act makes an appropriation to Public Education, State Board of Education and State Board for Vocational Education and Department of Public Instruction, State Board and Superintendent and Department of Public Instruction (95-01-01) for the Professional Standards Council. The Governor and the General Assembly recognize the need to continue implementation of the Professional Standards Council's "Educational Plan for Certification and Career Development". This appropriation is intended for use in the following areas: standard setting for PRAXIS I and II, new teacher assessment procedures, and, establishing an alternative route to teacher certification. For purposes of this appropriation, it is assumed the Educational Plan will provide for mandatory recertification of teachers and administrators on a five-year basis. These funds represent steps toward meeting that goal

**Section 284.** Section 1 of this Act provides an appropriation of \$2,025.0 to Public Education, State Board of Education and State Board for Vocational Education and Department of Public Instruction, State Board and Superintendent and Department of Public Instruction (95-01-01) for Standards and Assessment. Part of the Standards and Assessment program agenda is to support the development of curriculum standards, a comprehensive assessment system, and staff development activities at the building level. The State Board of Education shall provide reports on November 30, 1996 and April 30, 1997 to the Controller General and Budget Director on the progress of the development of the comprehensive assessment system, and building level staff curriculum development activities

**Section 285.** Section 1 of this Act appropriates General Funds and Appropriated Special funds to Public Education, State Board of Education and State Board for Vocational Education and Department of Public Instruction, State Board and Superintendent and Department of Public Instruction (95-01-01) for Student Standards and Assessment. This appropriation is to be used by the State Board of Education to operate programs to assess student performance, to operate programs for educator accountability initiatives and to support Standards and Assessment initiatives. It is the intent that the \$2,025.0 in General Funds be used to continue development of curriculum standards and a comprehensive assessment system, and that the associated \$100.0 in Appropriated Special Funds allow for the utilization of any remaining funds collected under this plan in previous fiscal years. Local school districts are required to deposit the local contribution for Standards and Assessment into a local account established for that purpose. These funds are to be used to acquire school-based materials which support the content standards implementation work. School districts should submit to the Department of Public Instruction a plan outlining the use of these funds.

**Section 286.** Section 1 contains an appropriation to Department of Public Instruction, Standards and Assessments (95-01-01) of \$2,025.0 for development of the Delaware State Testing Program. In accordance with the draft Test Design proposed by the State Board at its May meeting, it is anticipated that the State Testing Program will include the following

- (a) Beginning no later than the 1997-'98 school year, the State Board of Education shall conduct an annual assessment of student achievement for all regular pupils in a minimum of at least 4 grade levels in the core curriculum areas of English Language Arts and Mathematics
- (b) Beginning no later than the 2001-'02 school year, the State Board of Education shall conduct an annual assessment of student achievement for all regular pupils in a minimum of at least 4 grade levels in the core curriculum areas of Science and Social Studies.

- (c) The Assessments shall be designed and constructed so as to provide for each regular pupil
- (i) a valid and reliable measure of individual student performance relative to the State standards in such curriculum areas, and
  - (ii) a valid and reliable measure of student progress relative to students in other states, and students nationally

Expenditure of any of these funds shall be contingent upon 1) DPI reporting to the Joint Finance Committee and to the Delaware State Testing Program Leadership Council as to the status and timetable for test development and implementation as well as any changes to or difficulties with the proposed Test design, and 2) written approval from the Co-Chairs of the Joint Finance Committee

Section 287. The State Board of Education is authorized to provide local school districts \$3 per pupil in grades 3, 5, 8 and 10 based on the September 30, 1996 unit count, to do supplemental testing at the discretion of the local school board. This funding is contingent upon application and approval by the State Board of Education. Any local school district that does not opt to administer supplemental testing shall not be eligible to receive funding under the provisions of this section. For the purposes of this section, supplemental testing shall be defined as any testing administered, as the result of a local school board decision, in addition to the state funded writing assessment and the requirements of the Title 1 Program

Section 288. Section 1 of this Act makes an appropriation of \$20 0 to Public Education, State Board of Education and State Board for Vocational Education and Department of Public Instruction, State Board and Superintendent and Department of Public Instruction (95-01-01) for Odyssey of the Mind. This appropriation shall be made available to school students to assist in defraying out-of-state travel expenses associated with this program

Section 289. Section 1 of this Act makes an appropriation of \$150 0 to Public Education, State Board of Education and State Board for Vocational Education and Department of Public Instruction, State Board and Superintendent and Department of Public Instruction (95-01-01) for Student Mentoring. The State Board of Education is authorized to review and award grants to school districts for the establishment of student mentoring programs for elementary and middle school students. Programs selected shall provide at-risk children with academic tutoring and instruction through the involvement of parents and volunteer mentors. These programs may also utilize federal funds to maximize resources. In evaluating applications, the State Board of Education shall consider the following criteria: (1) demonstrated record of improved academic achievement, (2) provision of a cost-effective plan that is mutually beneficial to the State, (3) collaborative involvement of more than one school district and/or more than two schools within the same district, (4) integration with discipline prevention programs, as funded through Delaware Code, Title 14, Chapter 16 Comprehensive School Discipline Improvement Program, and (5) adherence to academic standards established by the Curriculum Framework Commissions, as part of the overall education reform initiative

Section 290. Section 1 of this Act provides appropriations of \$249,261.4 for Formula Salaries and \$92,094.0 for Other Employment Costs to Public Education, School District Operations, Division Funding (95-02-01). These amounts provide salaries and other employment costs for the following categories as determined by the September 30 unit count entitlement of each school district: Title 14, Section 1305, Section 1306, Section 1307, Section 1308, Section 1309, Section 1310, Section 1311, Section 1321, Section 1324, Section 1331 and Section 1332, Delaware Code. These appropriations also contain salaries and other employment costs funds for the Americanization Program operated by the Caesar Rodney and Red Clay Consolidated School Districts. These sums are \$8 1 and \$91 1, respectively

Section 291. The Delaware Code notwithstanding, during Fiscal Year 1997, the Budget Director is authorized to continue funding for issues such as, but not limited to, number of administrative positions and activity busing for which the State was required to provide funding as a result of a 1978 Federal Court Order

Section 292. Line Item funds appropriated in Section 1 of this Act to Public Education, School District Operations, Other Items (95-02-02) are to cover adjustments in the Appropriation Units of the State Board of Education and State Board for Vocational Education and Department of Public Instruction, Block Grants and Pass Through Programs, Pupil Transportation, or the local school districts. Examples of such use are salary line transfers and adjustments, unit adjustments, state share of tuition payment for private placement of handicapped pupils, for Delaware residents of the Delmar School District attending Maryland schools, expenditures for Americanization classes, pupil transportation costs

Section 1 of this Act also provides certain appropriations to Public Education, School District Operations, Other Items (95-02-02) and Block Grants and Pass Through Programs (95-03-00) for school districts in the State. Title 14, Chapter 17, Section 1704, Delaware Code, provides the method of determining the appropriate number of pupil units for each school district based on the September 30 enrollment. Sufficient funds will be placed in the school district accounts to operate for a partial year. Based on the approved State Board Unit Count for September 30, adjustments will be made to the district accounts. These

adjustments will be accomplished through the transfer process and therefore approved by the Budget Director and the Controller General.

General Fund appropriations to Public Education in Appropriation Units (95-03-00), (95-04-00) and the Delmar Tuition, General Contingency, Teacher of the Year, Desegregation Monitoring, and Debt Service Appropriations in Appropriation Units (95-01-00) and (95-02-00) shall not be subject to the limitations as defined for Division I and Division II in Title 14, Chapter 17 Sections 1708 and 1709, Delaware Code.

**Section 293.** Section 1 of this Act provides certain appropriations to Public Education, School District Operations, Other Items and Debt Service in the State. These amounts are not based on the unit system. Allocation of these funds shall conform to the following.

- (a) Debt Service amounts are predicated upon the amortization schedule as provided by the State Treasurer
- (b) The line item "Other Items" in the Internal Program Unit Other Items (95-02-02) shall be allocated as follows

1	Caesar Rodney - Amencanization	\$	47
2	Red Clay - Americanization		90
3	Margaret S. Sterck -		
	Residence - Other Costs		85.4
	Consultant Services		11.0
	Preschool Summer Program		6.9
4.	Christina Autistic -		
	Residence - Other Costs		206.5
	Contractual Services		11.4
	Total	\$	334.9

**Section 294.** Section 1 of this Act makes appropriations to Public Education, School District Operations, Division Funding (95-02-01) for Division II - All Other Costs and Energy. During the fiscal year ending June 30, 1997, a school district upon approval of the Budget Director and the Controller General, may transfer part of its allocated appropriation from Division II Energy to Division II - All Other Costs. A school district may use Division II - Energy funds to obtain engineering studies required for Exxon or Stripper Well funds. A Division II - Energy Unit shall be valued at \$1,407.00. A Division II - All Other Costs Unit shall be valued at \$3,152.00. The Division II - All Other Costs appropriation shall be used for all school costs (including library resources) except salaries and other employment costs, state and local benefits, debt service, energy, and transportation of pupils to and from their regular sessions of school. The purchase of computer equipment with Division II - All Other Costs funds shall be subject to the technical review and purchase requirements of the Office of Information Services Planning and Data Administration.

**Section 295.** Section 1 of this Act makes an appropriation to Public Education, School District Operations, Division Funding (95-02-01), for Division II - All Other Costs. Within this amount, a total of \$160 is authorized to be allocated to Charter Schools for textbooks. These funds shall be made available to those Charter Schools approved for operation during school year 1996-97. The funding shall be allocated on a per pupil basis, with each school receiving \$46.58 per student on July 1, 1996 based on the reported May 1, 1996 roster to the State Board of Education.

**Section 296.** For FY 1997, any school district whose per unit amount for Division III - Equalization funding as computed under the provisions of Section 1707, Title 14 of the Delaware Code, is less than the computed per unit amount in FY 1996, shall receive Equalization funding for the number of units certified in FY 1996, based on a per unit amount that is equal to one-half of the difference between the FY 1996 and FY 1997 amount added to the FY 1997 amount. New units generated in FY 1997 will be funded at the FY 1997 computed amount.

**Section 297.** Amend Section 1707(b)(13), Title 14, Delaware Code, by striking said subsection and inserting in lieu thereof the following

"Authorized amount means \$23,250 for Fiscal Year 1997 and as established in the annual State Budget Appropriation Act thereafter."

**Section 298.** Amend Section 1707(c), Title 14, Delaware Code, by striking the following sentence as it appears therein in its entirety:

"The state share for special schools as defined in paragraph (1) of Subsection (b) of this Section shall be equal to the state share for the vocational-technical school district in the county in which the special school is located." And substituting in lieu thereof the following.

The state share for special schools as defined in paragraph (1) of Subsection (b) of the Section, except Intensive Learning Centers serving pupils of one district only, shall be equal to the state share for the vocational-technical school district in the county in which the special school is located. Intensive Learning Centers that serve only students of one district shall receive a state share equal to the state share for the district operating the Intensive Learning Center.

**Section 299** Appoquinimink School District may receive and spend energy funding, totaling \$26 0 above its Division II unit count for the operation of the State Service Center in the new high school. This funding shall be considered reimbursement to the district for energy costs associated with the center.

**Section 300** Section 1 of this Act provides an appropriation of \$4 346 1 to Public Education, Block Grants and Pass Through Programs, Adult Education and Work Force Training Block Grant (95-03-10). This appropriation shall be allocated by the State Board of Education to the following programs/districts: Adult Incarcerated (New Castle County Vocational Technical School District), Adult Trade Extension (state-wide), Apprentice Program (state-wide), James H. Grove High School (state-wide), Adult Basic Education (state-wide), New Castle County Learning Center (Christina School District), Delaware Skills Center (New Castle County Vocational Technical School District), Alternative Secondary Education Program (state-wide) and Cities in Schools of New Castle County (Colonial School District). For Fiscal Year 1997, each program shall receive no less than the same allocation from this appropriation as its Fiscal Year 1996 allocation, except that the allocations for the Delaware Skills Center and the New Castle County Learning Center shall be increased by \$130 0 and \$7 1 respectively. In addition, the State Board of Education shall utilize \$5 4 from this appropriation to support the data collection and monitoring activities of the Inter-Agency Council on Adult Literacy.

**Section 301** Section 1 of this Act makes an appropriation of \$5,254 7 to Public Education, Block Grants and Pass Through Programs, Professional Accountability and Instructional Advancement Fund (95-03-10).

(a) The following allocations shall be provided:

- (1) \$175 0 for Alternative Routes programs. \$50 0 is provided for the Alternative Routes to Certification program, to be used to initiate implementation of this project in FY 1997, based upon the recommendations of the Professional Standards Council. The remaining \$125 0 may be used for Critical Curriculum Areas and the Summer Institute program.
- (2) \$30 0 for National Certification Stipends, to be used to defray costs borne by teachers seeking National Board Certification through the National Board for Professional Teaching Standards.
- (3) A total of \$2,000 0 is to be utilized for grants to districts for the purpose of developing and implementing curriculum based upon the content standards established by the Curriculum Framework Commissions, as approved by the State Board of Education. Districts shall submit application to the Department of Public Instruction detailing the district's plan for utilization of the funds. The State Board of Education will provide review and approval. The State Board of Education shall allocate an amount not to exceed \$250 per certificated employee, based upon each district's personnel complement for school year 1995-96 (including official administrative, instructional support, professional other and teachers). Grants may be utilized for training, planning, in-service programs and contractual services for assistance in developing the curriculum. For purposes of this program, inter-district collaboration and cooperation is encouraged as a means toward maximizing resources on a state-wide basis.

(b) Of the remaining funds, the following minimum allocations shall be provided:

- (1) \$140 0 for Delaware Principals Academy activities. The Department of Public Instruction shall determine, in coordination with the agency (or agencies) operating this program, the goals and objectives of this program, including how it will further the objectives of Standards and Assessment and integrate Shared Decision Making training into the program focus. The Controller General and the Budget Director shall ensure that the proposed program is cost efficient and meets the objectives outlined in this section before agreeing to transfer the appropriation from the Department of Public Instruction to the operating agency. All expenditures from this allocation shall serve principals from the State of Delaware only.
- (2) \$320 0 for Professional Mentoring. The intent of this appropriation is for exemplary teachers to assist new teachers through leadership and guidance. It also includes a training component in order for teachers to become better mentors. The Department of Public Instruction is hereby authorized to extend the current mentoring initiative to a statewide program, as much as practicable.
- (3) \$250 0 for Shared Decision Making training.

(4) \$500.0 for Tuition Reimbursement. This allocation provides, at the discretion of the State Board of Education, for the possible operation of a tuition reimbursement program for the purpose of reimbursing public school employees and teachers employed by state agencies for tuition payments for graduate college courses they successfully complete. Funds may only be used to reimburse certificated non-administrative employees. No payment shall be made unless the course taken relates to the employee's job assignment and is taken with the prior approval of the employing district board, superintendent or state agency. Local school district boards of education are required to prioritize the allocation of the funds they receive to support the educational advancement efforts of regular education teachers taking special education and/or mainstreaming related courses and other educational priorities established by the local boards of education based on staff development goals or to ameliorate identified deficiencies.

Reimbursement for tuition may be made for courses taken during summer school or during the academic year for which a passing grade of C or better is obtained. No reimbursement shall be in excess of the tuition charged a Delaware resident taking a course with an equal number of credit hours at the University of Delaware. Of the total allocation made by the State Board of Education, a minimum of .75 percent shall be allocated to state agencies and the balance shall be allocated to the several school districts in amounts equal to each school district's proportion of Division I units to the total number of Division I units state-wide on September 30, 1996. Any funds not expended by a school district or a state agency shall be transferred to other districts or agencies. In the event that any district's allocation is not sufficient to provide total reimbursement to all eligible employees, the district shall pro-rate the funds so that each eligible employee receives a share of the total district allocation equal to the individual employee's reimbursable expenditure divided by the total reimbursable expenditure of all employees in the district multiplied by the district allocation. Funding for each school district shall be divided into two equal parts. The first one-half shall be prorated as described above among eligible employees who complete their courses prior to February 1, 1997. The second one-half shall be prorated as described above among eligible employees who complete their courses prior to June 15, 1997. In the event that funds remain in either half year, the district shall be authorized to reallocate those funds to reimburse eligible employees in the other portion of the year who did not receive full reimbursement. This Section shall supersede collective bargaining agreements to the contrary.

(5) \$687.7 for the Department of Public Instruction for the Teacher to Teacher Instructional Cadre which provides for the purchase of release time of exemplary teachers in the approved content areas, who will provide assistance to districts on a state-wide basis in designing, demonstrating and implementing best teaching practices in the development of curriculum to meet the established standards.

(6) \$650.0 shall be allocated by the State Board to the districts for professional development activities, including, but not limited to, the following areas: Discipline, Special Education/Inclusion, Collaboration/Consensus Building, Conflict Resolution, Shared Decision Making, Educational Technology, and Curriculum/Instructional Development. Districts shall provide application to the State Board for this additional allocation which shall not exceed \$81.00 per certificated employee (beyond the original \$250 per certificated employee for Curriculum/Instructional Development activities).

In the application, districts shall detail the proposed utilization of the funds as well as the incorporation of the following criteria:

(a) Integration of proposal with existing resources and programs, such as the Comprehensive Discipline Act (House Bill 247), Goals 2000, Delaware Principals Academy, Delaware Teachers' Centers, Drug Free Schools, Chapters 1 and 2, Special Education, and local funds dedicated to Standards and Assessment

(b) Inclusion of local staff in planning of grant proposal, with representation from all involved in student learning, including all professional employees by category. The plan(s) should focus on overall improved student performance, with a built-in level of accountability to determine effectiveness

For purposes of these grants, schools are encouraged to collaborate as a means toward maximizing resources as well as focusing district activities on consistent priorities

(7) Any funds remaining subsequent to these allocations may be disbursed at the discretion of the State Board of Education for professional accountability and instructional advancement activities

(8) The funds appropriated under Subsection (a)(3), (b)(3), (b)(5), and (b)(6) of this section shall be appropriated on a 15 month basis and shall not be subject to reversion until September 30, 1997. Program expenses, however, may not be incurred subsequent to the start of the regular 1997-1998 school year

**Section 302.** Section 1 of this Act makes an appropriation to Public Education, Block Grants and Pass Through Programs, Professional Accountability and Instructional Advancement Fund (95-03-10) for Shared Decision Making. The Governor and the General Assembly recognize the importance of increased local board and school building level authority as a

means toward improving student achievement and increasing accountability. To that end, HB 604 of the 138th General Assembly sets forth a process through which members of the school community may participate to pursue their vision of shared decision making. In order for the initial structured conversations and subsequent transition planning activities to commence, school districts are eligible for grants in the amount of \$20.0 per district, provided they meet the criteria set forth in the legislation. As stipulated in the legislation, approximately one-third of that award (or \$6.667) shall be available for the district level conversations, and the remaining two-thirds (or \$13.333) will be used to design a transition plan at the district level. The State Board of Education shall adopt guidelines for the approval of these grants, as required in the legislation. It is anticipated that Phase II building level conversations/transition plans will be funded through state General Fund and Federal Goals 2000 Funds.

**Section 303.** Section 1 of this Act makes an appropriation to the State Board of Education Block Grant and Pass Through Programs, Academic Excellence Block Grant (95-03-10). Of the amount appropriated, \$18,727.3 shall be used to fund units for academic excellence in the school districts in accordance with Section 1716, Title 14, Delaware Code. The balance of \$3,701.8 shall be allocated to school districts in proportion to the number of Division I Units each district enrolls on the last school day in September 1996. School districts may use the funds to purchase computer hardware, software or services, calculators, library resources, fund homebound instruction costs; provide substitute teachers; provide additional nurses so long as the district is entitled to less than one nurse per school, provide a student work-study program, provide conflict resolution training, provide extended day or extended year programs for students performing below the standard level; provide stipends for professionals engaged in curriculum or professional development activities sponsored by a local school district or the Department of Public Instruction, outside of the regular school day. School districts may form consortia, utilizing homebound funds, to purchase or provide services. No homebound funds may be spent to provide services to students who have been suspended or expelled from school, except for special education students.

**Section 304.** For the fiscal year beginning July 1, 1996, any local school district that has had two consecutive failed current expense tax referendums during the time period July 1, 1994 to January 1, 1997, is authorized to exercise the cash option on Academic Excellence units up to the total number of units provided under that program. This provision will apply for Fiscal Year 1997 only. In addition, districts meeting this criteria are authorized to utilize funds derived from this cash option to pay local salary supplements. Any district that has had a successful current expense tax referendum subsequent to two consecutive failed current expense tax referendums is ineligible for the provisions of this section.

**Section 305.** Amend Section 1716(f), Title 14, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof the following:

(f) One unit of funding shall include Division I funding for one person funded under §1305 of this Title or two aides funded under §1324 of this Title, as specified in Subsection(e) of this section plus one unit of "Division II - All Other Costs" as contained in the Annual Appropriations Act. In addition, beginning with the fiscal year commencing July 1, 1996, any unit that is filled with an employee(s) as described in this subsection, and not taken as a cash option as described in subsection(g) of this section, shall also include one-half of the state-share of the Division III Equalization unit amount as defined in Section 1707, Title 14, Delaware Code.

**Section 306.** The unit size for an Academic Excellence Unit was reduced from 290 full-time equivalent students to 250 full-time equivalent students in Fiscal Year 1995. These additional funds have been included for the purpose of addressing the concerns of the educational community regarding school discipline and climate issues as well as the need to provide additional instructional time for students achieving below the standard level. Although this increased funding has been placed in the flexible Academic Excellence line, school districts are strongly encouraged to use the additional resources for such programs and are encouraged to develop the plan for the utilization of resources with building administrators, instructional staff and parent organizations. School districts shall report to the State Board of Education regarding the process utilized to develop the plan and the use of the funds. The State Board of Education shall provide a summary of school district plans for use of Fiscal Year 1997 Academic Excellence funds to the Office of the Budget and Controller General no later than January 15, 1997.

**Section 307.** Amend Title 14, Section 1716(c), Delaware Code, by adding at the end of the section the following and educational technology personnel on a district-wide basis."

**Section 308.** Section 1 of this Act appropriates \$30.0 within Public Education, Block Grants and Pass Through Programs, Professional Accountability and Instructional Advancement Fund (95-03-10). This appropriation is to be used in FY 1997 to defray costs for teachers seeking national board certification from the National Board for Professional Teaching Standards. Recognizing the effort involved in pursuing such certification as well as the value it will bring to Delaware teachers and students, commencing July 1, 1997, a certification obtained under this program by a teacher paid under Title 14, Section 1305 Delaware Code, shall result in an additional \$1,500.00 in pay for each year such certification is maintained. The Department of Public Instruction shall report annually to the Budget Director and Controller General the number of certificates obtained under this program.

**Section 309.** Section 1 of this Act provides an appropriation of \$9.9 to Public Education, Block Grants and Pass Through Programs, K-12 Pass Throughs (95-03-15) for the Delaware Nature Society. It is the intent that this money be used to provide summer programs including an eighth grade program in environmental heritage.

**Section 310.** Section 1 of this Act provides an appropriation of \$135 0 to Public Education, Block Grants and Pass Through Programs, K-12 Pass Throughs (95-03-15) for the READ-ALOUD Delaware Program. READ-ALOUD Delaware is to continue to develop and foster programs for the purpose of encouraging regular reading to preschool-aged children as an effective way to prepare them for learning. The monies passed through to READ-ALOUD Delaware shall be used to provide programs in each county, focused on the more disadvantaged segment of the population of preschool-aged children. The State Board of Education shall report annually on the number of children participating and the effectiveness of the program.

**Section 311.** Section 1 of this Act provides an appropriation of \$97 2 to Public Education, Block Grants and Pass Through Programs, K-12 Pass Throughs (95-03-15) for Advanced Studies. The State Board of Education shall transfer this appropriation to the University of Delaware to help fund a summer school program, for college credit, for gifted and talented students.

**Section 312.** Section 1 of this Act provides an appropriation of \$105 0 to Public Education, Block Grants and Pass Through Programs, K-12 Pass Throughs (95-03-15) for the Delaware Institute for Arts in Education. The State Board of Education shall transfer this appropriation to the University of Delaware which acts as the fiscal agent for this state-wide program.

**Section 313.** Section 1 of this Act provides an appropriation of \$150.0 to Block Grants and Pass Through Programs, K-12 Pass Throughs (95-03-15) for Magnet School Start-Up Grants. The State Board of Education shall review and award grants to applicants who are proposing to establish a public magnet school. Applicants should detail the proposed public school's plan to attract students from outside the home district. Those applications which are designed to maintain a desegregated learning environment shall be given priority. Grants will be awarded on a competitive basis and shall be utilized for planning and/or program development. Individual grant awards shall not exceed \$25.0 and shall be one-time in nature to each recipient.

**Section 314.** Section 1 of this Act makes an appropriation of \$5.0 to the Block Grants and Pass Through Programs, K-12 Pass Throughs (95-03-15) for the Special Music Program. These funds shall provide for a music instrument rental program for needy students at Martin Luther King Jr. Elementary School in the Colonial School District.

**Section 315.** In order that the children for whom the learning disability and socially or emotionally maladjusted units were devised shall be the sole beneficiaries of all funds available for such children, the State Board of Education shall require strict adherence to approved guidelines before release of any funds designated for such children. The State Board of Education shall particularly ascertain that no educable mentally handicapped are being classified as learning disabled; and that strict guidelines are developed to determine eligibility of socially or emotionally maladjusted children so that this category does not become a catch-all for low-achieving, unmotivated or disruptive pupils without serious physiological or neurological disorders. All pupils classified learning disabled or socially or emotionally maladjusted must be reevaluated at least every two years except psychological evaluation shall be made at least every three years. The State Board shall report annually to the Budget Director and the Controller General on or before April 1 on the actions and results of actions required by this section.

**Section 316.** Section 1 of this Act makes an appropriation of \$550 0 ASF to Public Education, Block Grants and Pass Through Programs, Special Needs Programs (95-03-20) for the Children's Services Cost Recovery Project (CSCR). All local school districts shall fully participate in the implementation and operation of the project for the fiscal year ending June 30 1997. Local school district participation shall be on a district-wide basis.

The following resources are appropriated to operate the Children's Services Cost Recovery Project during the fiscal year ending June 30, 1997. No appropriation is made for the purchase of additional state-owned vehicles pursuant to this section. The appropriated funds for supplies and in-state travel which, pursuant to this section, are passed through to the local school district shall be dedicated to implementing the Children's Services Cost Recovery Project.

In addition, 13.0 FTE staff positions are appropriated to support this project. 1 0 FTE shall be an Education Associate Cost Recovery Associate at the Department of Public Instruction (DPI). The State Board of Education is hereby permitted to authorize the hiring of up to 12.0 FTEs in the local school districts for the sole purpose of implementing this section. The 12 0 FTEs in the local school districts shall be paid in accordance with the Financial Secretary Salary Schedules 1308 and 1309 including the local salary supplement in place at the employing school districts. At the discretion of the State Board of Education 1 0 FTE may be paid in accordance with the Administrative Secretary Salary Schedules 1308 and 1309 including the local salary supplement in place at the employing local school district.

All revenue generated through the cost recovery project from local school district sources will, after the deduction of all operational project costs, be divided on a 70/30 basis between the State General Fund and the local school districts operating funds. Any funds returned to a local school district that were generated through recovery on non-transportation services provided by a tuition-based special school must be made available to the special school for expenditure at the special school.

Audit exceptions, including any penalties and fees, will be covered from drawdowns on future recoveries on a 70/30 basis between the State General Fund and the local school district operating funds where the exception occurred

**Section 317** For the purpose of participating in the Children's Services Cost Recovery Project, provisions of the Delaware Code to the contrary notwithstanding, school psychologists certified or otherwise licensed by the State Board of Education in accordance with the provisions of Title 14, Section 1092, Delaware Code, shall be considered in compliance with qualification standards equivalent to state licensure to practice psychology as set forth in Title 24, Section 3508, Delaware Code. Such equivalent state licensure status shall be limited to the delivery of services related to State Board of Education or local school district approved school programs conducted within the course of the regular school day at a State Board of Education or local school district approved school site or least restrictive environment location. The provisions of this Section shall in no way be construed as entitling a person not otherwise qualified to do so to represent himself to the public by any title or description of services incorporating the words "psychology," "psychological," and/or "psychologist" within the meaning of Title 24, Section 3502, Delaware Code, except as may be herein specifically provided

**Section 318** Section 1 of this Act provides an appropriation of \$2,212 0 to Public Education, Block Grants and Pass Through Programs, Special Needs Programs (95-03-20) for the operation of the Program for Children with Disabilities. The school districts in which children reside who are to be provided the special services, are authorized to levy and collect local tuition tax to cover the local share of the program costs

**Section 319** Section 1 of this Act provides an appropriation of \$2,212 0 to Public Education, Block Grants and Pass Through Programs, Special Needs Programs (95-03-20) for the Program for Children with Disabilities (PCD)

The IRMC shall be composed of the following members (or their designee with full voting powers)

Superintendent of Public Instruction who shall be the chairperson of the IRMC

Cabinet Secretary, Department of Health and Social Services,

Cabinet Secretary, Department of Services for Children, Youth and Their Families,

Budget Director,

Controller General

The affirmative vote of a majority of all members shall be required to take action

The IRMC shall periodically review eligibility criteria for services under PCD and make recommendations to the State Board of Education as appropriate

The IRMC was created to promote interagency collaboration in the service of those eligible for the PCD, to promote the cost-effective use of existing resources -- federal and state, public and private, and to promote the opportunity for coordination with programs for other exceptional children. To accomplish these goals, the IRMC shall do the following

- 1 Allocate all funds provided by the State, obtained by it, or under its control, which are designated for the service of children eligible for the PCD
- 2 Coordinate resources to support family-centered services for eligible children and their families, as appropriate
- 3 Seek to develop collaborative approaches with the institutions of higher education for the service of those eligible for the PCD. Special emphasis shall be placed on the use of existing preschool educator training and child care provider training programs
- 4 At its discretion, hire a full-time coordinator who shall report to the IRMC. The coordinator shall serve as liaison to the Department of Public Instruction, Instructional Services Branch

The IRMC may, at its discretion, apply for and allocate grant funds that will serve children eligible for the PCD and further any of the purposes of this Section. Sources of such grant funds may include the federal Childcare Block Grant, Developmental Disabilities Council, federal Child and Maternal Health Grant, federal Title XX Delaware First Again grants where appropriate

The IRMC is hereby granted the power to use any funds under its control and not otherwise restricted to either hire employees or contract for services

The IRMC shall report to the Governor, President Pro-Tempore of the Senate, and the Speaker of the House on April 15 of each fiscal year. Each report shall include:

1. A summary of IRMC experience in attempting to accomplish its purposes as stated above; and,
2. A recommendation of the IRMC whether and how to institutionalize its activities and functions

The Budget Director and the Controller General are hereby authorized to transfer additional funds serving this population among the budgets of the departments represented on the IRMC if there is prior agreement by the secretary or superintendent of the department, as the case may be, to which the funds were previously allocated.

For the purpose of facilitating the continuation of services, programs receiving an allocation under the provisions of this section may receive 20 percent of the prior year's allocation at the outset of each Fiscal Year. These programs are required to present program proposals to the IRMC as required by the IRMC Policy Coordinator. Upon IRMC approval, adjustments to the program allocations may be made.

The IRMC shall be the designated forum through which the Coordinating Council for Children with Disabilities (CCCD) will provide regular program updates regarding ISIS. The IRMC will also serve as the venue through which additional funding request and/or program needs of ISIS may be presented. An active partnership with the private sector participants of ISIS shall be maintained, with related activities included in the status reports to the IRMC.

**Section 320.** Section 1 of this Act appropriates \$1,783.1 to Public Education, Block Grants and Pass Through Programs, Special Needs Programs (95-03-20) for the Early Childhood Assistance Program. Funds are to be used to provide early childhood programs for four-year olds in accordance with Title 14, Chapter 30. It is anticipated that for Fiscal Year 1997 approximately 102 additional four-year-old children will be served via this funding. The Interagency Resource Management Committee (IRMC) has administrative responsibility, which includes reviewing and disbursing grant awards, ensuring program compliance; and providing an annual report to the Legislature and Family Services Cabinet Council regarding the activities of the program. The IRMC shall issue a Request for Proposal (RFP) for prospective providers for all classrooms on an annual basis. The Department of Public Instruction shall assist with the implementation and ongoing administration of this program. The IRMC shall report to the Budget Director and the Controller General on or before January 1 each fiscal year on the status of the program.

**Section 321.** (a) Section 1 of this Act makes an appropriation of \$7,396.0 to Public Education, Block Grants and Pass Through Programs, Special Needs Programs (95-03-20) for Student Discipline Programs. Of this appropriation, the following allocations shall be made: \$2,100.0 is allocated for the state-wide implementation of programs for severe discipline cases. Of that amount, a total of \$1,560.0 will be allocated to the three counties in the following manner: 50 percent to New Castle County, 25 percent to Kent County and 25 percent to Sussex County. The additional \$540.0 will be disbursed on a competitive basis among the existing school district consortiums or to individual school districts. If funds provided under this section are used for costs associated with teachers and aides, as provided for in Title 14, Section 1305, Delaware Code, the funds can only be used for costs associated with the state share.

(b) A total of \$4,050.0 is authorized for disruptive students at the school and district levels. The base incentive grants shall be provided to all school districts in the State as follows:

Schools with less than 500 pupils in grades K-12	\$12.0
Schools with 500 to 799 pupils in grades K-12	\$20.0
Schools with 800 to 1,199 pupils in grades K-12	\$28.0
Schools with 1,200 or more pupils in grades K-12	\$36.0

Enrollment levels shall be computed utilizing September 30, 1995, enrollment counts. If funds provided under this section are used for costs associated with teachers and aides, as provided for in Title 14, Section 1305, Delaware Code, the funds can only be used for costs associated with the state share.

Under Title 14, Chapter 16 of the Delaware Code, local school districts are eligible to receive a supplemental grant equal to double the base award, for grades 7, 8, 9 and 10, upon approval of the State Board of Education and certification in the district's grant application that the school is in compliance with the provisions of the Delaware Code requiring the establishment of school site-base committee to govern discipline matters.

In order to provide districts with grants in a timely manner, all applications for base grants must be submitted for review by the State board of Education no later than November 15 of each year.

(c) \$1,196.0 is appropriated for the prevention component which requires the Family Services Cabinet Council (FSCC) to identify three communities in which to develop comprehensive plans for delivering prevention services through a community.

based inter-agency collaborative effort. The FSSC, in conjunction with the Department of Public Instruction and the Department of Services for Children, Youth and Their Families, shall assist selective communities in developing appropriate pilot projects and may use the funds for any project(s) which they deem likely to demonstrate effective and coordinated prevention strategies.

(d) For the purpose of facilitating the continuation of services, districts receiving an allocation under the provisions of subsections (a) and (b) of this section, may receive 50 percent of the prior year's base grant allocation at the outset of each Fiscal Year. These districts are required to present program proposals to the State Board of Education no later than November 15 each year. Upon State Board approval, adjustments to program allocations will be made.

**Section 322.** (a) Section 1 of this Act makes an appropriation to Public Education (95-03-20) Special Needs Programs for Student Discipline Programs. The Department of Services for Children, Youth and Their Families is hereby authorized to provide early intervention services to address problems such as, but not limited to, Early Onset Conduct Disorder. These services are intended for grades K-3. The Department may enter into contractual agreements, may employ casual/seasonal personnel, or may create the necessary positions with approval of the Delaware State Cleanhousing Committee and maintain an ASF or NSF account with sufficient spending authority to operate the program.

(b) The Family Services Cabinet Council, with the Department of Public Instruction and the Department of Services for Children, Youth and Their Families acting as lead agencies, shall administer a competitive Request for Proposal (RFP) process to determine grant awards to local school districts. Grant awards shall be for a period of 12 months. Factors that may be utilized in the evaluation of proposals can be, but are not limited to, the following: links to Part II discipline funding or other district resources, the use of collaborative partnerships, the relative need of the local school district community, and the recognition within a proposal of the need to provide services to meet the presenting problems of both the child and the family. To the extent possible, the Department of Services for Children, Youth and Their Families is authorized to pursue Medicaid cost recovery for eligible services provided to Medicaid eligible children. Funds resulting from these cost recovery efforts may be used to expand these services with the prior approval of the Budget Director and the Controller General.

**Section 323.** Section 1 of this Act appropriates \$50,000 to Public Education, Block Grants and Pass Through Programs, Special Need Programs, (95-03-20), Student Discipline, for a pilot School Offense Diversion Program in New Castle County, which shall be a community based program contracted out through the Division of Youth Rehabilitative Services (YRS).

**Section 324.** Section 1 of this Act provides an appropriation of \$2,921,600 to Public Education, Block Grants and Pass Through Programs, Special Needs Programs, Unique Educational Alternatives (95-03-20) to implement Title 14, Section 3124, Delaware Code. For the fiscal year ending June 30, 1997, any placement made pursuant to this Section shall be considered a special program placement and shall be eligible for inclusion in local school district tuition tax rate setting. Districts shall contribute 30 percent of the total cost associated with the placement of any district student in such a program. The provisions of the Delaware Code to the contrary notwithstanding, for the fiscal year ending June 30, 1997, the State Board of Education is authorized to continue utilizing funds appropriated in Section 1 of this Act to develop unique educational alternatives, in lieu of private placement, for persons who have been, or who would otherwise be, identified as "complex or rare" and unable to benefit from the regularly offered free, appropriate public educational programs and students in present education programs within this State whose individual education plan requires services not presently available within the present unit funding system. Unique educational alternatives shall be defined and approved by the State Board of Education and may include, but not be limited to, related and supportive services.

**Section 325.** Section 1 of this Act makes an appropriation of \$2,921,600 to the Public Education, Block Grants and Pass Through Programs, Special Needs Programs, Unique Educational Alternatives (95-03-20). Before the State Board of Education can authorize expenditures for new placements from this appropriation, the case must be reviewed by the Interagency Collaborative Team.

The Interagency Collaborative Team shall consist of

- Division Director, Division of Child Mental Health Services of DSCYF
- Division Director, Family Services of DSCYF
- Division Director, Division of Mental Retardation of DHSS
- Division Director, Division of Alcoholism, Drug Abuse and Mental Health of DHSS
- Director of the Office of the Budget or designee
- The Controller General or designee
- The Team Leader, Exceptional Children's Team, DPI, who will serve as Chair
- Associate Superintendent, Improvement and Assistance, DPI

A Director assigned to the ICT may designate staff to represent them on the ICT only if these designated representatives are empowered to act on behalf of the Division Director including commitment of division resources.

The IRMC shall report to the Governor, President Pro-Tempore of the Senate, and the Speaker of the House on April 15 of each fiscal year. Each report shall include:

1. A summary of IRMC experience in attempting to accomplish its purposes as stated above, and,
2. A recommendation of the IRMC whether and how to institutionalize its activities and functions.

The Budget Director and the Controller General are hereby authorized to transfer additional funds serving this population among the budgets of the departments represented on the IRMC if there is prior agreement by the secretary or superintendent of the department, as the case may be, to which the funds were previously allocated.

For the purpose of facilitating the continuation of services, programs receiving an allocation under the provisions of this section may receive 20 percent of the prior year's allocation at the outset of each Fiscal Year. These programs are required to present program proposals to the IRMC as required by the IRMC Policy Coordinator. Upon IRMC approval, adjustments to the program allocations may be made.

The IRMC shall be the designated forum through which the Coordinating Council for Children with Disabilities (CCCD) will provide regular program updates regarding ISIS. The IRMC will also serve as the venue through which additional funding request and/or program needs of ISIS may be presented. An active partnership with the private sector participants of ISIS shall be maintained, with related activities included in the status reports to the IRMC.

**Section 320** Section 1 of this Act appropriates \$1,783.1 to Public Education, Block Grants and Pass Through Programs, Special Needs Programs (95-03-20) for the Early Childhood Assistance Program. Funds are to be used to provide early childhood programs for four-year olds in accordance with Title 14, Chapter 30. It is anticipated that for Fiscal Year 1997 approximately 102 additional four-year-old children will be served via this funding. The Interagency Resource Management Committee (IRMC) has administrative responsibility, which includes reviewing and disbursing grant awards, ensuring program compliance; and providing an annual report to the Legislature and Family Services Cabinet Council regarding the activities of the program. The IRMC shall issue a Request for Proposal (RFP) for prospective providers for all classrooms on an annual basis. The Department of Public Instruction shall assist with the implementation and ongoing administration of this program. The IRMC shall report to the Budget Director and the Controller General on or before January 1 each fiscal year on the status of the program.

**Section 321** (a) Section 1 of this Act makes an appropriation of \$7,396.0 to Public Education, Block Grants and Pass Through Programs, Special Needs Programs (95-03-20) for Student Discipline Programs. Of this appropriation, the following allocations shall be made: \$2,100.0 is allocated for the state-wide implementation of programs for severe discipline cases. Of that amount, a total of \$1,560.0 will be allocated to the three counties in the following manner: 50 percent to New Castle County, 25 percent to Kent County and 25 percent to Sussex County. The additional \$540.0 will be disbursed on a competitive basis among the existing school district consortiums or to individual school districts. If funds provided under this section are used for costs associated with teachers and aides, as provided for in Title 14, Section 1305, Delaware Code, the funds can only be used for costs associated with the state share.

(b) A total of \$4,050.0 is authorized for disruptive students at the school and district levels. The base incentive grants shall be provided to all school districts in the State as follows:

Schools with less than 500 pupils in grades K-12	\$12.0
Schools with 500 to 799 pupils in grades K-12	\$20.0
Schools with 800 to 1,199 pupils in grades K-12	\$28.0
Schools with 1,200 or more pupils in grades K-12	\$36.0

Enrollment levels shall be computed utilizing September 30, 1995, enrollment counts. If funds provided under this section are used for costs associated with teachers and aides, as provided for in Title 14, Section 1305, Delaware Code, the funds can only be used for costs associated with the state share.

Under Title 14, Chapter 16 of the Delaware Code, local school districts are eligible to receive a supplemental grant equal to double the base award, for grades 7, 8, 9 and 10, upon approval of the State Board of Education and certification in the district's grant application that the school is in compliance with the provisions of the Delaware Code requiring the establishment of school-site-base committee to govern discipline matters.

In order to provide districts with grants in a timely manner, all applications for base grants must be submitted for review by the State Board of Education no later than November 15 of each year.

(c) \$1,196.0 is appropriated for the prevention component which requires the Family Services Cabinet Council (FSCC) to identify three communities in which to develop comprehensive plans for delivering prevention services through a community

based, inter-agency collaborative effort. The FSSC, in conjunction with the Department of Public Instruction and the Department of Services for Children, Youth and Their Families, shall assist selective communities in developing appropriate pilot projects and may use the funds for any project(s) which they deem likely to demonstrate effective and coordinated prevention strategies.

(d) For the purpose of facilitating the continuation of services, districts receiving an allocation under the provisions of subsections (a) and (b) of this section, may receive 50 percent of the prior year's base grant allocation at the outset of each Fiscal Year. These districts are required to present program proposals to the State Board of Education no later than November 15 each year. Upon State Board approval, adjustments to program allocations will be made.

**Section 322.** (a) Section 1 of this Act makes an appropriation to Public Education (95-03-20) Special Needs Programs for Student Discipline Programs. The Department of Services for Children, Youth and Their Families is hereby authorized to provide early intervention services to address problems such as, but not limited to, Early Onset Conduct Disorder. These services are intended for grades K-3. The Department may enter into contractual agreements, may employ casual/seasonal personnel, or may create the necessary positions with approval of the Delaware State Clearinghouse Committee and maintain an ASF or NSF account with sufficient spending authority to operate the program.

(b) The Family Services Cabinet Council, with the Department of Public Instruction and the Department of Services for Children, Youth and Their Families acting as lead agencies, shall administer a competitive Request for Proposal (RFP) process to determine grant awards to local school districts. Grant awards shall be for a period of 12 months. Factors that may be utilized in the evaluation of proposals can be, but are not limited to, the following: links to Part II discipline funding or other district resources, the use of collaborative partnerships, the relative need of the local school district community, and the recognition within a proposal of the need to provide services to meet the presenting problems of both the child and the family. To the extent possible, the Department of Services for Children, Youth and Their Families is authorized to pursue Medicaid cost recovery for eligible services provided to Medicaid eligible children. Funds resulting from these cost recovery efforts may be used to expand these services with the prior approval of the Budget Director and the Controller General.

**Section 323.** Section 1 of this Act appropriates \$50,000 to Public Education, Block Grants and Pass Through Programs, Special Need Programs, (95-03-20), Student Discipline, for a pilot School Offense Diversion Program in New Castle County, which shall be a community based program contracted out through the Division of Youth Rehabilitative Services (YRS).

**Section 324.** Section 1 of this Act provides an appropriation of \$2,921,600 to Public Education, Block Grants and Pass Through Programs, Special Needs Programs, Unique Educational Alternatives (95-03-20) to implement Title 14, Section 3124, Delaware Code. For the fiscal year ending June 30, 1997, any placement made pursuant to this Section shall be considered a special program placement and shall be eligible for inclusion in local school district tuition tax rate setting. Districts shall contribute 30 percent of the total cost associated with the placement of any district student in such a program. The provisions of the Delaware Code to the contrary notwithstanding, for the fiscal year ending June 30, 1997, the State Board of Education is authorized to continue utilizing funds appropriated in Section 1 of this Act to develop unique educational alternatives, in lieu of private placement, for persons who have been, or who would otherwise be, identified as "complex or rare" and unable to benefit from the regularly offered free, appropriate public educational programs and students in present education programs within this State whose individual education plan requires services not presently available within the present unit funding system. Unique educational alternatives shall be defined and approved by the State Board of Education and may include, but not be limited to, related and supportive services.

**Section 325.** Section 1 of this Act makes an appropriation of \$2,921,600 to the Public Education, Block Grants and Pass Through Programs, Special Needs Programs, Unique Educational Alternatives (95-03-20). Before the State Board of Education can authorize expenditures for new placements from this appropriation, the case must be reviewed by the Interagency Collaborative Team.

The Interagency Collaborative Team shall consist of

- Division Director, Division of Child Mental Health Services of DSCYF,
- Division Director, Family Services of DSCYF,
- Division Director, Division of Mental Retardation of DHSS,
- Division Director, Division of Alcoholism, Drug Abuse and Mental Health of DHSS,
- Director of the Office of the Budget or designee,
- The Controller General or designee,
- The Team Leader, Exceptional Children's Team, DPI, who will serve as Chair,
- Associate Superintendent, Improvement and Assistance, DPI.

A Director assigned to the ICT may designate staff to represent them on the ICT only if these designated representatives are empowered to act on behalf of the Division Director including commitment of division resources.

The Interagency Collaborative Team shall invite to its meetings

A representative of a responsible school district for the case under consideration  
 The parents of the child;  
 Other persons the team believes can contribute to their deliberations

The Interagency Collaborative Team shall

Review existing assessments of new referrals,  
 Prescribe, if required, additional assessments for new referrals.  
 Review proposed treatment plans of new referrals  
 Recommend alternatives for treatment plans of new referrals.  
 Coordinate interagency delivery of services.  
 Review at least annually, current Unique Educational Alternatives for the appropriateness of  
 treatment plans and transition planning.  
 If appropriate, designate a Primary Case Manager for the purpose of coordination of services  
 agencies  
 If appropriate, designate agencies to be involved in collaborative monitoring of individual  
 cases

The Interagency Collaborative Team will ensure that state costs incurred as the result of a Team recommendation or assessment of a child currently funded from the Unique Educational Alternatives appropriation for this purpose in Section 1 of this Act will be covered from the existing appropriation. New referrals will be assessed in the inter-agency manner described above. The Interagency Collaborative Team may accept and review cases initiated by other agencies, but in all cases the school district of residence must be involved in the review.

Cases reviewed by the ICT will employ Unique Educational Alternatives funding to cover state costs to the extent determined appropriate by the Interagency Collaborative Team. Other agencies may recognize a portion of the responsibility for the treatment of these children if determined appropriate by the Team. Funds may be transferred upon the approval of the Budget Director and the Controller General.

The Interagency Collaborative Team shall report on its activities to the Governor, Budget Director, President Pro Tempore, Speaker of the House and the Controller General by February 15, 1997. The report shall address the status of items addressed in the February 1996 ICT Annual Report.

**Section 326** For FY 1997, the Interagency Collaborative Team (ICT) is authorized to allocate up to \$250 from the Unique Educational Alternatives appropriation to perform an evaluation of the program for its effectiveness with individual students as well as the overall operation of the ICT. This evaluation shall also include the development of an ongoing, permanent evaluation tool for this program. This report shall be completed no later than May 1, 1997.

**Section 327** As a member of the Interagency Collaborative Team (ICT), the Division of Mental Retardation is designated as the lead agency to establish an interagency committee which will focus on developing an integrated service-delivery plan and policies of family and community support services for children with mental retardation and severe developmental disabilities. The committee shall report its findings no later than May 1, 1997.

**Section 328** Any placement made pursuant to Section §3124, Title 14, Delaware Code in which the individual involved is a ward of the State shall be funded fully from the State appropriation made for this purpose.

**Section 329** Section 1 of this Act provides an appropriation of \$806.4 to Public Education Block Grants and Pass Through Programs, Special Needs Programs (95-03-20) for Exceptional Student Unit - Vocational. This appropriation shall be used to continue the program of vocational education for handicapped students in New Castle, Kent and Sussex counties. The funds appropriated shall provide for Divisions I, II, and III funding for a maximum of six units in a single program. The unit shall be based upon 13,500 pupil minutes per week of instruction or major fraction thereof after the first full unit and shall be in addition to the funding otherwise provided under Title 14, Subsection 1703(d), Delaware Code. The deduct contained in Title 14, Subsection 1703 (i) Delaware Code shall not apply to the units authorized by this Section.

**Section 330** Section 1 of this Act provides an appropriation of \$2,650.0 to Public Education Block Grants and Pass Through Programs, Special Needs Program (95-03-20) for Extra Time for Students. Of these funds, an amount of \$2,250.0 is to be used exclusively to provide extra instructional time for low achieving students in order that they may improve their academic performance in the four primary content areas (mathematics, science, English language arts, and social studies) as measured against the state standards of such subjects. The only exception to this requirement is that up to 15 percent of a district's allocation may be used for Extended School Year (ESY) requirement pursuant to the Administrative Manual for Programs.

Exceptional Children (AMPEC) The "Extra Time for Students" appropriation shall be administered by the State Board of Education with the following criteria

(1) Initial allocations shall be provided to each district in proportion to their percentage share of General Fund ten month employee average daily cost for the preceding fiscal year. From this initial allocation the State Board shall withhold an amount not to exceed \$336,000 in order to cover Board approved costs associated with additional transportation that may be required to support extra time programs.

(2) In order to qualify for an allocation each district shall submit an application to the State Board by November 15, 1996. The application must indicate the student populations to be served, the type of program(s) proposed, the levels of academic improvement the additional services are intended to achieve, and the measurement and/or evaluation process the district will use to determine program effectiveness. In addition, the application must show evidence of building level staff involvement in the development of the district proposal.

(3) For purposes of this section, "Extra Time" is defined as academic instruction or remediation programs that are offered to a targeted population of low achieving students that are in addition to the regularly scheduled six and one half hour school day and/or the 180 day school year, sufficient to positively impact student performance.

(4) Funds appropriated pursuant to this section may not be used for curriculum development or staff training functions but may be used for the purchase of supplies and materials necessary to operate extra time programs. To the extent that funds are used to pay salary expenses of district instructional staff, these funds may only be used for costs associated with the state share of salaries, as provided under Title 14, Section 1305, Delaware Code.

(5) In order to maximize resources provided under this program, local school districts may match their allocation on a 70:30 state/local basis pursuant to the provisions of Title 14, Chapter 1902(b), Delaware Code.

(6) Districts may also use funds appropriated for the Extra Time Program to contract with private or non profit instructional or tutoring services provided that there is evidence of building level conversations regarding contracted services.

(7) If, after the applications are received by the State Board, a local district does not choose to utilize the full amount to which they are entitled, or if there are residual funds in the transportation set-aside, the State Board may allocate any remaining amount through a competitive RFP process.

The funds appropriated for this program shall be appropriated on a 15 month basis and shall not be subject to reversion until September 30, 1997. Program expenses, however, may not be incurred subsequent to the start of the 1997-98 regular school year.

(8) Of the amount appropriated, \$400,000 shall be exclusively for an Early Intervention Reading Program. This program is intended to serve Kindergarten through 3rd grade students who are identified during their kindergarten and 1st grade years as being inadequately prepared to succeed in reading or are performing below grade level. The funds authorized shall be allocated among the district that serve elementary students based on their relative share of Division I regular elementary units and shall be used exclusively to provide supplemental services or teaching methods designed to improve the reading abilities of such students with the goal being that they achieve and maintain their appropriate grade level reading ability. These services should primarily utilize intensive systematic phonics as the instructional methodology.

The allocation of these funds shall be subject to the State Board approving specific district allocations. The Board shall monitor this program's effectiveness and report its findings annually on or before May 15 to the Budget Director and Controller General. The funds allocated to the Early Intervention Reading Program may be used and/or matched for any purpose that is in accordance with the provision of this Section. In addition, this allocation may be used during the regular school day, provided, however, that the services being offered are supplemental to the reading instruction the student would otherwise normally receive.

Section 331 Any provisions of the Delaware Code to the contrary notwithstanding, the State Board of Education is authorized and directed to provide an aide for the purpose of providing mainstreaming services to deaf students, three in the Lake Forest School District and the Capital School District, two for the Seaford School District and the Woodbridge School District, and one in the Jesus Rodney School District.

Section 332 It is the intent of the General Assembly that sabbatical leave authorized under Delaware Code, Title 14, Section 1325, at state expense, be limited to one full year leave or two 1/2 year leaves per local school district during the fiscal year ending June 30, 1997. Nothing in this section, however, shall prevent a school district from granting additional sabbatical leaves if the district pays the salary and other employment costs for the employee who is on leave.

Section 333 Section 1 of this Act makes an appropriation of \$288,000 to Public Education Block Grants and Pass Through Programs, Special Needs Programs (95-03-20), for Tech Prep 2+2. A Delaware Tech Prep Consortium is formed to

provide for overall program development and management, coordination and technical assistance. The Consortium will review and provide technical assistance and in-service training for each proposal submitted to the State Board of Education by any partnership initiating or operating a Tech Prep Program. The Consortium will adopt rules and regulations consistent with state regulations and federal legislation.

The Consortium Board of Directors shall include: the President, Delaware Technical And Community College, the Superintendents of New Castle County Vocational-Technical School District, Kent County Poly-Technical School District and the Sussex County Vocational-Technical School District; the State Director of Vocational Education, Department of Public Instruction, (Ex-Officio); the Executive Director of Delaware Advisory Council on Career and Vocational Education; President or Designee, Delaware State University and Wilmington College and one representative of business and industry. The Superintendent or designee of two comprehensive local school districts will also be appointed consistent with the rules and regulations of the Consortium. Programs will be conducted in all three counties, on all campuses of Delaware Technical And Community College and other postsecondary institutions as specified by the Consortium consistent with federal legislation. All secondary schools are eligible.

Kent County Poly-Technical School District will act as financial agent for the Consortium and an annual financial and program report will be submitted to the co-chairpersons of the Delaware Legislative Joint Finance Committee.

The Consortium may select another member to serve as the financial agent in a subsequent year consistent with the rules and procedures it adopts.

**Section 334.** (a) Section 1 of this Act provides an appropriation of \$3,000.0 to Public Education, Pupil Transportation (95-04-01) for Non-Public School Transportation Reimbursements. This appropriation shall be allocated for qualifying non-public, non-profit schools, based on the procedure adopted by the Joint Finance Committee on April 16, 1981.

(b) Transportation funds for public school districts during the fiscal year ending June 30, 1997, shall be allocated and shall not exceed \$42,323.9 (of which \$500.0 is designated as a transportation contingency for the Charter and Choice initiatives) according to bus contract or district transportation formula, as adopted by the State Board of Education on July 23, 1987, subject to the following amendments and procedural modifications:

(1) The per gallon price used to calculate the gasoline allowance shall be based on the state contract bid price for unleaded gasoline plus \$.07 per gallon for districts and plus \$.28 per gallon for contractors. For districts and contractors north of the Chesapeake and Delaware Canal, the per gallon price shall be based on delivery to a large-sized tank (5,000 or more gallons). In the case of contractors located south of the Chesapeake and Delaware Canal, the per gallon price shall be based on delivery to a small-sized tank (275 - 1,900 gallons). Upon determination by the State Board of Education that a contractor located North of the Chesapeake and Delaware Canal and operating five or fewer buses does not have existing storage capacity in the large tank range, the per gallon price shall be based on the smaller tank size.

(2) The Fiscal Year 1997 operating allowance will be adjusted for inflation by a rate of 3.5 percent.

(3) For the fiscal year ending June 30, 1997, the allowable cost of a new bus purchased by a contractor shall be the Fiscal Year 1996 state bid price for new buses minus three percent for salvage value, plus ten percent to account for dealer charges and profits not reflected in the state bid price due to the higher number of buses being purchased and the lag time between the ordering and delivery. The State Board of Education shall continue to utilize the procedures developed in Fiscal Year 1989 for determining the allowable cost for any size bus that it did not bid in Fiscal Year 1996. In addition to the procedure for establishing the allowable cost of a new bus specified above, the State Board of Education is requested to structure its bids for buses in the fiscal year ending June 30, 1997, in such a manner that public school bus contractors will be permitted to purchase buses from the successful lower bidder at the same price as the State of Delaware. If a contractor elects to purchase a bus at the bid price, that bid price minus three percent for salvage value will be the allowable cost in subsequent reimbursements to the contractor.

(4) The formula rate for reimbursing public school bus contractors for the cost of liability insurance shall be determined by the State Board of Education in consultation with the Insurance Commissioner based on the data available on April 30 of the previous fiscal year.

(c) The State Board of Education shall amend its transportation formula to permit replacement of a vehicle which has operated 100,000 school-related miles and is seven model-years old or a vehicle which has operated 150,000 school-related miles regardless of the age of the vehicle.

(d) The State Board of Education is authorized to amend its formula to allow the purchase of diesel-powered buses as the minimum standard in those sizes where gasoline-powered buses are no longer available.

(e) Except as specified in this Section, or for changes in the price of gasoline, or for the adjustments of those items changed by state or federal laws, the State Board of Education shall not change the transportation formula unless the change has been authorized by the General Assembly and an appropriation therefore has been made by the General Assembly

(f) The State Board of Education is authorized to amend its formula such that automatic transmission shall be considered standard equipment on contractor and school district bus purchases

Section 335 (a) During the fiscal year ending June 30, 1997, the Department of Public Instruction is hereby directed to provide bus transportation of public school students previously declared ineligible by the Unique Hazards Committee, including the following.

- (1) Students attending the Stanton Junior High School who are now forced to walk along Telegraph Road with a constant threat of injury
- (2) Students attending Mt Pleasant High School who are now forced to walk along Marsh Road with a constant threat of injury
- (3) Students in the town of Seaford, living west of Conrail and north of the Nanticoke River, who attend the Seaford schools, grades K-6
- (4) Students attending Seaford Central Elementary who live in the area east of Conrail, north of the Nanticoke River, and west of Williams Pond, within the Seaford city limits
- (5) Students attending the Wilmington High School on Lancaster Avenue to Delaware Avenue in the north-south grid and on Jackson Street to duPont Street on the east-west grid.
- (6) Students attending Newark High School who live in Windy Hills and are forced to walk along Kirkwood Highway with a constant threat of injury
- (7) Students attending schools in Laurel living in the areas of Lakeside Manor, Route 24 east of Laurel town limits, Route 13A South of Laurel town limits and Dogwood Acres
- (8) Students attending Delcastle Technical High School who live in Newport and are forced to walk along Centerville Road (Rt 141) with a constant threat of injury
- (9) Students attending Woodbridge Junior-Senior High School who must travel along Route 13A south of Bridgeville, and students living west of Bridgeville who must travel along Route 404 or Route 18
- (10) Students attending Smyrna Middle School who reside in the Sunnyside Acres area between Sunnyside Road and U S 13 and who would otherwise be required to walk along U S 13 in order to reach school
- (11) Students attending the Concord High School who live south of Naamans Road in the Talleybrook-Chalfonte, Brandywood, Brandon and Beacon Hill areas who must walk along Grubb and/or Naamans Road with a constant threat of injury
- (12) Students attending Richardson Park School and Conrad Junior High School who live on Brookside Drive
- (13) Students attending the Laurel Elementary Schools in Grades K-6 who live in the Town of Laurel and the surrounding areas
- (14) Students attending Dover High School who live in Old Sherwood, south of Waples Avenue.
- (15) Students attending the Mt. Pleasant Elementary School, who would be forced to walk along Bellevue Road
- (16) Students attending the Mt Pleasant Elementary School, who would be forced to cross over and/or walk along River Road between Lore and Bellevue
- (17) Students attending the Douglas Kindergarten Center, who would be forced to walk along Route 2 (Union Street) or through Canby Park via the paths, with a constant threat of injury
- (18) K-3 - New Todd Estates Development to Jeannie Smith - because of hazards of Route 4 at Pierson Drive intersection

- (19) Children living in West Wilmington Manor who walk to Wilmington Manor Elementary School
- (20) Woodbridge Elementary School students living in the town of Greenwood west of the railroad tracks
- (21) Woodbridge Jr /Sr High School students living on Route 13A from Route 13 north of Bridgeville to Bridgeville north of town limits including streets with access to that part of Route 13A
- (22) Talley Jr High School students who reside in the Ashburn Hills, Greentree, Stoney Brook areas students who reside in the Woodacre Apartments and students who live along Peachtree Road
- (23) Springer Middle School students residing in Eden Ridge III Tavistock, Sharpley and Eden Ridge who must cross Concord Pike
- (24) Indian River High School students who live east of Bedford Street
- (25) Smyrna Elementary School students who reside in the proximity of 4272 Judith Road

The transportation of the students specified herein shall continue until the funds requested are appropriated and construction is completed. Spur routes shall continue to be served as at present.

**Section 336** During the fiscal year ending June 30, 1997 the State Board of Education is hereby directed that students attending the Woodbridge School District who live in the Canterbury Apartments in Bridgeville will embark and disembark in the parking lot of the apartment complex in lieu of the bus stop area along the heavily traveled U.S. 13.

**Section 337.** Section 1 of this Act appropriates \$42,323.9 to Pupil Transportation (95-04-00) for Public School Transportation. Should House Bill No. 355 of the 138th General Assembly be enacted into law a portion of these funds shall be used to implement the provisions of House Bill No. 355 follows:

a) For those school districts or private contractors who are operating school buses equipped with cellular phone technology or have no radio or telephonic communication equipment the Department of Public Instruction is authorized to bring said districts and contractors under a State negotiated cellular phone contract such that the State shall pay one-half of the installation costs associated with the monthly connect charge.

b) For those school districts or private contractors who are operating school buses equipped with radio equipment the Department is authorized to reimburse said districts or contractors one-half of the installation cost of the radio equipment.

**Section 338** Provisions of the Delaware Code to the contrary notwithstanding it is the intention of the General Assembly that for Fiscal Year 1997 and previous fiscal years that the positions of Director and Statewide Coordinator (2) at the Sterck for the Hearing Impaired be considered State unit positions and paid according to Delaware Code, Title 14, with appropriate local supplement.

**Section 339** Section 1 of this Act contains an appropriation for the operation of the Center for Educational Technology. The State of Delaware has also committed \$30 million, through the 21st Century Fund, for this educational technology initiative that will provide the necessary technological infrastructure to enable students to meet newly established academic standards as well as to be prepared to compete in the work force. In order for all school districts to maximize the benefits of this project for their schools as well as to provide their employees with necessary assistance as required, school districts are encouraged to designate a district-wide technology coordinator whose responsibilities will include assistance with the implementation of the state's educational technology initiative. This employee may be funded through the Academic Excellence Block Grant units.

**Section 340** Section 1 of this Act provides for the transfer of \$210.9 General Fund personnel costs and 1.7 GF/FTEs and 0.5 NSF/FTEs from the Department of Public Instruction (95-01-01) to the Delaware Center for Educational Technology (95-07-01). It also includes the transfer of \$48.0 in General Funds for telephone lines and maintenance.

**Section 341** Section 1 of this Act makes an appropriation to Public Education, Delaware Advisory Council on Career and Vocational Education (95-06-01). Included in that appropriation is funding to partially offset a reduction in federal funds to which there is no accompanying decrease in program mandate. As a means toward planning for the future of the State of the State Board of Education and State Board for Vocational Education shall address this issue as part of its FY 1998 budget submission. This review shall include an assessment of the role of the Council in public education.

**Section 342** Amend Section 4118, Chapter 41, Title 14 of the Delaware Code by deleting the first sentence of paragraph (c) and inserting in lieu thereof the following:

At least every three years the State Board of Education shall solicit proposals and shall select participants for the program.

Section 343 Amend Section 121 Chapter 1 Title 14 of the Delaware Code by deleting the last sentence of paragraph (3).

Section 344 Amend Section 121 Chapter 1 Title 14 of the Delaware Code by deleting the words "state supervisors state specialists," as they appear in paragraph (4) of said section and substituting in lieu thereof the following:

Team Leaders or Directors, Education Associates, Education Specialists, Field Agents, Technicians."

Section 345 Amend Section 1321 Chapter 13 Title 14 of the Delaware Code by deleting the sentences: "The State Board of Education shall be authorized to pay an annual amount of \$7,000.00 to each individual designated as a team leader as supplement for administrative responsibility." Such supplement shall be in addition to any other salary the individual is entitled to receive in accordance with the provisions of this chapter," as it appears in paragraph (a) of said section, and substituting in lieu thereof the following:

"The State Board of Education shall be authorized to designate up to ten (10) positions within its authorized full-time complement to function as team leaders or directors. In recognition of the administrative or management responsibility assigned to these positions, such individuals shall receive up to \$7,000.00 more than the amount that a similarly qualified and experienced Education Associate would be entitled to receive in accordance with the provisions of this chapter."

Section 346 Amend Section 511 Chapter 5 Title 14 of the Delaware Code by deleting paragraph (e) in its entirety and substituting in lieu thereof the following:

(e) New charter school applications shall be submitted to an approving authority on or before December 31 for schools to be established and prepared to admit students on or after the second September 1 thereafter. Charter school applications which propose the conversion of an existing public school or a part thereof to charter school status must be submitted to an approving authority on or before October 30 if the application proposes that the newly converted charter school is to be established and prepared to admit students for the next ensuing school year."

Section 347 Notwithstanding any provisions of the Delaware Code to the contrary, any charter school applicant that submitted an application to the State Board of Education by December 31, 1995 and which application subsequently was either not considered by the Board or was considered and approval was withheld, may submit a revised application on or before October 30, 1996 and if subsequently approved, may be established and prepared to admit students for the school year beginning September 1997.

Section 348 Notwithstanding any provision of the Delaware Code to the contrary, the State Board of Education may designate one position within its authorized full-time complement as "special counsel" to the Board. Such individual shall be a member of the Delaware Bar and shall work under the supervision and control of the Deputy Attorney General assigned to the State Board, but shall remain an employee of the Department of Public Instruction.

Section 349 For FY 1997, the sum of \$200.0 shall be transferred from the FY 1996 account, Legislative Office of the Deputy Attorney General (01-08-02-01-B7) to Public Education Pass Through Programs (95-03-15). These funds shall be used for student tutoring and mentoring activities. Program funds shall be distributed competitively to schools enrolling grades K-5 to State programs (such as the HOSTS structured tutoring and other mentoring programs) for students who are academically at risk. School districts shall provide written application to the State Board of Education for this allocation on behalf of school buildings. In the application, districts shall detail the proposed utilization of the funds as well as address the incorporation of the following program components in their proposal:

1. One-on-one tutoring for academically at risk students
2. Early childhood preventive intervention strategies
3. Mathematics and/or language arts curriculum base
4. Parental involvement
5. Program and student performance evaluation

Grant awards for individual schools of no more than \$30,000 each shall be determined by the State Board no later than September 1, 1996.

Section 350 For the Fiscal Year ending June 30, 1996, any sum in the New Directions 1995 appropriation (95-03-10-01-34) shall remain encumbered and shall not revert until June 30, 1997.

Section 351 Amend Section 1318 Title 14 Delaware Code by adding a new subsection (g) which shall read:

"§1318 (j) A duly-elected president of the Delaware State Education Association as defined in Chapter 40 of this title who requests a leave of absence without pay from a school board shall be granted a leave of absence by said school board for service the duration of the elected term. Said employee shall be eligible to purchase health insurance for him/herself and eligible dependents and other state benefits at his/her cost during said leave of absence. Other duly-elected officers of the Delaware State Education Association shall be granted twenty (20) release days by the employing school board to represent the association for education-related business. The association shall be responsible for the cost incurred for the hiring of a substitute. Such release time shall be in addition to other leaves granted the employee in this section."

**Section 352.** Amend Chapter 40, Title 14, Section 4010 (d) by adding a new sentence which shall read

"The Board shall include positions commonly referred to as positions for extra-pay-for-extra-responsibility in the professional bargaining unit for the sole purpose of bargaining the salary for these positions and any other provision mutually agreed to by the parties."

**Section 353.** For FY 1997, the Delaware Advisory Council on Career and Vocational Education (DACCVE) will experience a reduction in federal funding. In order to allow DACCVE to meet payroll obligations, the Budget Director and Controller General are authorized to make appropriate modifications to the agency's position complement during the year to cover necessary personnel expenditures, upon depletion of federal funds.

Approved July 1, 1996

CHAPTER 426  
 FORMERLY  
 SENATE BILL NO 470

AN ACT MAKING APPROPRIATIONS FOR CERTAIN GRANTS-IN-AID FOR THE FISCAL YEAR ENDING JUNE 30, 1997, SPECIFYING CERTAIN PROCEDURES, CONDITIONS AND LIMITATIONS FOR THE EXPENDITURE OF SUCH FUNDS, AND AMENDING CERTAIN PERTINENT STATUTORY PROVISIONS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (THREE-FOURTHS OF ALL THE MEMBERS ELECTED TO EACH HOUSE THEREOF CONCURRING THEREIN)

Section 1 Funds are hereby appropriated to the following grants-in-aid in the amounts listed

Accounting		
Code	Organization/Description	Amount
<b>Executive</b>		
(10-02-07)	Delaware Higher Education Commission	\$1,000,000
	<u>Dept. of Health &amp; Social Services</u>	
(35-01-10)	Office of Secretary Adolescent Program	\$ 582,225
(35-05-30)	Emergency Medical Services Paramedic Program Operations	\$ 6,173,900
<b>Accounting</b>		
Code	Organization/Description	Amount
(35-14-10)	Division of Aging	
	Senior Center	
	Absalom Jones Senior Center	\$ 131,723
	Brandywine Senior Center	102,976
	Bridgeville Senior Center	90,724
	Cape Henlopen Senior Center	147,886
	Chesapeake and Delaware Senior Center	63,850
	Clarence Fraim Senior Center of Delaware, Inc	128,250
	Claymore Senior Center	
	(formerly St Hedwig's Senior Center, Inc )	177,334
	Cornerstone United Methodist Church Senior Center	39,319
	DeLaWarr Senior Center	106,976
	Fredenca Adult Center, Inc	85,788
	Georgetown CHEER Center	40,462
	Graham Senior Center, Inc	
	(formerly St Ann's Neighborhood Services, Inc )	93,445
	Greenwood CHEER Senior Center	41,541
	Harrington Senior Center Inc	74,445
	Harvest Years Senior Center, Inc	43,845

(35-14-10)

## Division of Aging

## Senior Center, continued

Howard J. Weston Community & Senior Center, Inc	254,768
Huling Cove CHEER Center	67,860
Indian River Senior Center, Inc	96,374
Jewish Community Center, Senior Center	79,621
Jimmy Jenkins Senior Center	73,618
Laurel Senior Center, Inc.	155,358
Lewes Senior Citizens Center, Inc	46,795
Los Abuelos Center	27,706
M.O.T. Senior Citizen Center, Inc.	93,497
Mamie A. Warren Maturity Center, Inc	77,959
Mid-County Senior Center, Inc	157,813
Millford Senior Center, Inc	90,002
The Modern Malunty Center, Inc	225,908
Nanticoke Indian Elder CHEER Center	33,773
Nanticoke Senior Center, Inc	125,311
New Castle Senior Center	73,742
Newark Senior Center, Inc.	133,445
Northeast Senior Center, Inc	71,558
Oak Grove Senior Center, Inc	153,644
Oak Orchard CHEER Center	46,652
Ocean View Leisure Center	24,380
Peoples Settlement - Senior Citizens Program	61,262
Roxana CHEER Senior Center	41,541
St. Anthony's Senior Center	99,005
St. Patrick's Center, Inc	119,865
St. Peter's Adult Center, Inc	93,785
St. Thomas Senior Center, Inc.	108,021
The Salvation Army Senior Center (formerly Julia Tallman Golden Age Center)	68,406
Sellers Senior Center, Inc.	104,329
Slaughter Neck CHEER Center	41,541
Lillian Smith Senior Center	32,489
South Wilmington Senior Adult Center	22,272
West Center City Adult Center, Inc	80,606
Wilmington Senior Center, Inc	154,534

## Department of Public Safety

(45-01-01)

Office of Secretary - Administration	
Local Police Coordination	\$ 55,500
Aid to Local Law Enforcement	500,000

TOTAL - Section 1 \$ 12,817,629

Section 2 Funds are hereby appropriated to the following grants-in-aid in the amounts listed

Category/Description

One-Time Items

Department of Public Safety - Aid to Local Law Enforcement	\$	1 400.000
Blades Volunteer Fire Co Inc		2,225
Delaware Volunteer Firemen's Association		60.000

Arts/Historical/Cultural/Tourism

African Festival & Parade LTD	\$	4,000
Afro-American Historical Society of Delaware, Inc		19,000
Associated Community Talents, Inc		18,500
City of New Castle - Separation Day		15,000
Delaware Academy of Science, Inc -Iron Hill Museum		12,500
Delaware Agricultural Museum Assoc. Inc		41 000
Delaware Center for Horticulture, Inc		24,500
Delaware City Day Committee		20 500
Delaware Greenways, Inc		
(formerly Northern Delaware Greenway Council, Inc )		7,500
Delaware Humanities Council, Inc		37,000
Delaware Nature Society, Inc		23 000
Delaware State Fair, Inc		200,000
Delaware State Police Museum, Inc		16,000
Duck Creek Historical Society, Inc		3 700
Fort Delaware Society		6,000
Friends Society of Brandywine Park		6,000
Georgetown Historical Society		13 000
Greater Harrington Historical Society		17 500
Historic Red Clay Valley, Inc		
Wilmington & Western Railroad		14 100
The Historical Society of Delaware		70,000
Howard Bailey Life Enrichment Program		2,500
Kalmar Nyckel Foundation		5,600
Millsboro Historical Society		10,000
Miss Delaware Scholarship Pageant, Inc		7 350
Naamans Kill Questers, Inc		6,500
Nanticoke Indian Association, Inc		10,700
New Castle Historical Society		7,000
Preservation Delaware		7,500
Sister Cities of Wilmington		3 000
Sussex County Return Day, Inc		6,000
Taylor's Bridge Community Center		2 750
WHYY, Inc		485 000

Aging - Other

Boys & Girls Clubs of Delaware, Inc	\$	50,000
Catholic Charities, Inc /HERO		40,000
Creative Grandparenting, Inc		22,000
Delaware Senior Olympics		21,000
Georgetown CHEER Senior Services - Homebound Meals		5 000
Geriatric Services of Delaware, Inc		136 500
Greenwood CHEER Senior Services - Homebound Meals		5,000
Harvest Years Senior Center		10,000

Aging - Other. continued

HERO, Inc.		11,000
Meals on Wheels of Lewes and Rehoboth, Inc.		47,500
Modern Maturity Center, Inc. - Meals on Wheels		15,000
Newark Senior Center		10,000
Oak Orchard CHEER Senior Services - Homebound Meals		10,000
Roxana CHEER Senior Services - Homebound Meals		10,000
Slaughter Neck CHEER Senior Services - Homebound Meals		10,000
Sussex County Senior Services, Inc.		48,500
Sussex County Senior Services - Cheermobile Mini Market	\$	11,000
William "Hicks" Anderson Community Center - Senior Physical Fitness Program		8,000

Handicapped/Health/Labor

Adult Special Education Program, Inc.	\$	49,970
AHEDD, Inc. - Dover/Wilmington		51,100
Alliance for the Mentally Ill in Delaware		59,500
American Cancer Society, De. Division, Inc.		30,000
American Diabetes Assoc. - Delaware Affiliate, Inc.		10,000
Arthritis Foundation, Delaware Chapter		18,400
Association for the Rights of Citizens with Mental Retardation in Delaware		9,750
Career Exploration Program, Inc.		39,900
Connections CSP, Inc.		3,000
Delaware Association for Blind Athletes		6,240
Delaware Association for the Blind		51,550
Delaware Breast Cancer Coalition		10,000
Delaware Center for Wellness, Inc.		54,000
Delaware Chapter Alzheimer's Association		10,000
Delaware Elwyn, Inc.		21,300
Epilepsy Foundation of Delaware		12,000
Delaware Head Injury Association, Inc.		7,300
Delaware Hospice, Inc.		215,000
Delaware Mental Health Consumer Coalition, Inc.		5,200
Delaware Nursing Centers, Inc.		20,800
Delaware Paralyzed Veterans Prosthetics Fund, Inc.		36,180
Delaware Special Olympics		20,500
Easter Seal Society of Del-Mar, Inc.		94,600
Institute for Development of Human Resources		24,000
Jobs for Delaware Graduates, Inc.		217,000
Kent/Sussex Industries, Inc.		61,000
Kent/Sussex Industries, Inc. - Cafetena		10,000
Mancus Foundation		38,657
Mary Campbell Center, Inc.		75,000
Mental Health Association in Delaware, Inc.		19,240
Mom's House, Inc. of Dover		10,000
National Multiple Sclerosis Society		11,900
Opportunity Center, Inc		12,000

Handicapped/Health/Labor, continued

Perinatal Association, Inc	16,250
Ronald McDonald House of Delaware	34,000
W. E. Tobin Foundation for the Visually Impaired	3,000
Tressler Centers of Delaware	3,000
Wellness Community - Delaware	2,000

Family and Youth Services

Residential Treatment

Aid-in-Dover, Inc.	\$	55,000
Children's Home, Inc		49,350
Diamond State Youth, Inc.		124,950
Home for Aged Women - Minquadale Home, Inc.		14,700
Independent Living, Inc.		105,000
Layton Home for Aged Persons		174,000
Milton & Hattie Kutz Home, Inc.		5,000

Other

Because We Care, Inc.	\$	43,050
Big Brothers/Big Sisters of Delaware, Inc		52,500
Boy Scouts of America, De-Mar-Va Council, Inc		5,000
Boys & Girls Clubs of Delaware, Inc.		75,600
Camp Barnes, Inc.		23,500
Central Delaware Branch of YMCA		30,000
Child, Inc.		90,510
Delaware Association of Family & Consumer Sciences	\$	2,500
Delaware Children's Trust Fund		14,700
Del. Guidance Services for Children & Youth, Inc		183,750
Del. Parent Aide & Resource Mother Coalition		15,750
Del. State Parents Association, Inc.		18,564
Delaware Volunteer Legal Services, Inc.		5,000
Delawareans United To Prevent Child Abuse		44,100
Family & Children Services of Delaware, Inc		411,453
The Family & Workplace Connection (formerly Child Care Connection, Inc)		130,200
Harrison House Community Programs, Inc		10,500
Interfaith Housing Delaware, Inc		15,750
Jewish Family Service of Delaware, Inc		25,000
Lutheran Community Services, Inc		12,127
National Council on Agricultural Life and Labor Research Fund, Inc		40,950
New Hope Recreation and Development Center		15,750
Northern Delaware Youth for Chrst, Inc		11,550
PAL of Delaware		21,000
People's Place II, Inc.		110,250
"Slam Dunk to the Beach" - National Holiday Basketball Invitational.		52,500
SOAR, Inc.		12,000
Stormin's Classic		6,000
Supporting K I.D.D.S		15,750

Family and Youth Services

## Other, continued

United Cerebral Palsy of Delaware, Inc.	66,150
Volunteers for Adolescent Pregnancy Prevention	5,000
Youth Guidance Program	19,000

Alcohol/Drug Abuse

The 1212 Corporation	\$	33,400
Addictions Coalition of Del., Inc.		26,300
ANKH, Inc.		30,250
Brandywine Counseling, Inc.		14,700
Center for Pastoral Care		41,200
City of Dover Police Department, Substance Abuse Prevention Program		25,200
Delaware Association for Children of Alcoholics		26,300
Kent County Counseling		20,000
Limen House, Inc.		49,400
Open Door, Inc.		150,300
Peoples Settlement Association		19,500
Resource Center of the YMCA of Delaware		59,900
SODAT - Delaware, Inc.		15,000
Sojourners' Place, Inc.		26,300

Neighborhood/Community Services

A Door of Hope, Inc.	\$	32,000
American Red Cross in De. - Military/Social Services		15,000
American Red Cross in De. - Emergency/Disaster Services		35,000
American Red Cross in De. - Transportation		10,000
Better Homes of Seaford, Inc.		7,000
Casa San Francisco		60,600
Chesapeake Bay Girl Scout Council, Inc.		36,800
City of Seaford - De. Prevention Network		2,000
Civil Air Patrol, Delaware Wing		17,900
Claymont Community Council, Inc.		278,300
Community Design Center		18,900
Community Legal Aid Society, Inc.		117,000
CONTACT Delaware, Inc.		79,000
Delaware Center for Justice (formerly Delaware Council on Crime and Justice)		10,500
Delaware Chapter - People to People International		4,800
Delaware Clergy United in Social Action, Inc.		7,000
Delaware Coalition for Literacy, Inc.		7,000
Delaware Community Reinvestment Action Council, Inc.		5,000
Delaware Crime Stoppers, Inc.		17,400
Delaware Crop Improvement Association		2,500
Delaware Envirothon		1,000
Delaware Housing Coalition		27,900
Delaware Humane Association, Inc.		10,500
Delaware Mentor Program		15,800
Delaware Partners of the Alliance		5,300
Delaware Rural Water Association		11,600

Neighborhood/Community Services, continued

Delaware Safe Kids Coalition	5,000
Delaware Safety Council, Inc	41,000
Delaware Teachers Academy for Service Learning	16,900
Delmarva Rural Ministres, Inc	28,000
Dover Housing Development Corp	5,000
Eastlawn Area Human Services, Inc	63,000
Eastside Citizens, Inc.	25,000
Edgemoor Community Center, Inc	212,000
Elsmere Recreation, Inc	167,000
First State Community Action Agency, Inc	46,000
First State Community Loan Fund	5,000
First State Resource Conservation & Dev Council, Inc	23,500
Food Bank of Delaware	157,500
Girls Inc. of Delaware	40,000
Hilltop Lutheran Neighborhood Center, Inc	58,400
Hockessin Community Center, Inc	95,000
Home of Divine Providence, Inc./Bayard House	46,500
Homeward Bound, Inc	63,500
Ingleside Homes, Inc. - KAMIN	42,000
Ingleside Homes, Inc. - Project C A R E	30,700
Jewish Community Center	15,000
Junior Achievement of Delaware	10,000
Latin American Community Center, Inc	44,000
Milford Housing Development Corporation	16,000
Ministry of Caring, Inc - House of Joseph	43,300
Ministry of Caring, Inc -- House of Joseph II	2,500
Ministry of Caring, Inc. - Phase I	72,100
Ministry of Caring, Inc. - Phases II and III	71,000
Ministry of Caring, Inc - Emmanuel Dining Room	70,000
Ministry of Caring, Inc - Job Placement Center	27,000
Methodist Action Program	44,000
Neighborhood House, Inc.	75,000
Neighborhood House, Inc /MOT Community Action	79,000
Peninsula United Methodist Homes, Inc - SOS	5,000
Project Assist	4,000
Richardson Park Community Action Program, Inc	22,500
Rose Hill Community Center, Inc	180,000
The Salvation Army, Inc - Emergency Housing	108,200
The Salvation Army, Inc - Kent Co Crisis Alleviation	36,000
The Salvation Army, Inc - Sussex Co. Crisis Alleviation	6,500
The Salvation Army, Inc - Supported Employment Program	10,300
Science Alliance, Inc	18,000
Seamen's Center of Wilmington, Inc	7,000
Slaughter Neck Community Action Agency, Inc	45,000
Southbridge Medical Advisory Council, Inc (HJCC)	110,000
Southwest Wilmington Community Center, Inc	108,000
STEHM, Inc	15,000
Sussex Community Crisis Housing Services, Inc	28,000
The Sussex Family YMCA	25,800
Tri-State Bird Rescue and Research, Inc	30,000
Union Baptist Community Services, Inc	\$ 84,000
Urban Environmental Center, Inc	2,500

Neighborhood/Community Services, continued

USO Delaware, Inc.	2,500
West End Neighborhood House, Inc.	47,000
Whatcoat Social Service Agency	70,000
Wilmington Public Allies, National Office	15,000
YWCA of New Castle County, Delaware	227,000
TOTAL - Section 2	<u>\$ 10,895,966</u>

Section 3. (a) There is appropriated to the listed fire companies the following sums to be used for the prevention and extinguishment of fires throughout the State and for the maintenance of apparatus and equipment:

New Castle County

Aetna Hose, Hook and Ladder Co.	Newark	\$	19,056
Belvedere Volunteer Fire Company	Belvedere		19,056
Brandywine Hundred Fire Co. No. 1	Bellefonte		19,056
Christiana Fire Co.	Christiana		19,056
Claymont Fire Co	Claymont		19,056
Cranston Heights Fire Co.	Cranston Heights		19,056
Delaware City Fire Co.	Delaware City		19,056
Elsmere Fire Co	Elsmere		19,056
Five Points Fire Co. No. 1	Richardson Park		19,056
Goodwill Fire Co. No. 1	New Castle		19,056
Hockessin Fire Co.	Hockessin		19,056
Holloway Terrace Fire Co.	Holloway Terrace		19,056
Mill Creek Fire Co.	Marshallton		19,056
Minquadale Fire Co	Minquadale		19,056
Minquas Fire Co. No. 1	Newport		19,056
Odessa Fire Co., Inc	Odessa		19,056
Port Penn Volunteer Fire Co., Inc.	Port Penn		19,056
Talleyville Fire Co., Inc.	Talleyville		19,056
Townsend Fire Co., Inc	Townsend		19,056
Volunteer Hose Co., Inc	Middletown		19,056
Wilmington Manor Volunteer Fire Co., Inc	Wilmington Manor		19,056

Kent County

Bowers Volunteer Fire Co., Inc.	Bowers	\$	19,056
Camden-Wyoming Fire Co.	Camden		19,056
Carlisle Fire Co.	Milford		19,056
Cheswold Volunteer Fire Co.	Cheswold		19,056
Citizens' Hose Co No. 1, Inc.	Smyrna		19,056
Clayton Fire Co.	Clayton		19,056
Robbins Hose Co. (Dover Fire Dept.)	Dover		19,056
Farmington Volunteer Fire Co.	Farmington		19,056
Felton Community Fire Co.	Felton		19,056
Frederica Volunteer Fire Co.	Frederica		19,056
Harrington Fire Co.	Harrington		19,056
Hartly Volunteer Fire Co.	Hartly		19,056
Houston Volunteer Fire Co.	Houston		19,056
Leipsic Volunteer Fire Co.	Leipsic		19,056

Kent County

Little Creek Volunteer Fire Co	Little Creek	19,056
Magnolia Volunteer Fire Co	Magnolia	19,056
Marydel Volunteer Fire Co . Inc	Marydel	19,056
South Bowers Fire Co	South Bowers	19,056

Sussex County

Bethany Beach Volunteer Fire Co.	Bethany Beach	\$	19,056
Blades Volunteer Fire Co . Inc.	Blades		19,056
Bndgeville Volunteer Fire Co	Bndgeville		19,056
Dagsboro Volunteer Fire Co	Dagsboro		19,056
Delmar Fire Department	Delmar		19,056
Ellendale Volunteer Fire Co	Ellendale		19,056
Frankford Volunteer Fire Co	Frankford		19,056
Georgetown Fire Co., Inc.	Georgetown		19,056
Greenwood Volunteer Fire Co	Greenwood		19,056
Gumboro Volunteer Fire Co .Inc	Gumboro		19,056
Indian River Volunteer Fire Co	Indian River		19,056
Laurel Fire Department, Inc.	Laurel		19,056
Lewes Fire Department, Inc.	Lewes		19,056
Millsboro Fire Co	Millsboro		19,056
Millon Volunteer Fire Co	Milton		19,056
Millville Volunteer Fire Co	Millville		19,056
Rehoboth Beach Volunteer Fire Co	Rehoboth Beach		19,056
Roxanna Volunteer Fire Co	Roxanna		19,056
Seaford Volunteer Fire Dept . Inc	Seaford		19,056
Selbyville Volunteer Fire Co . Inc	Selbyville		19,056
Slaughter Beach Memonal Fire Co	Slaughter Beach		19,056

TOTAL \$

1,143,360

(b) There is appropriated to the listed fire companies the following sums to be used for the maintenance and operation of ambulances in the public service:

Aetna Hose, Hook and Ladder Co	Newark	\$	2,610
Blades Volunteer Fire Co . Inc	Blades		2,610
Bndgeville Volunteer Fire Co	Brdgeville		2,610
Bowers Volunteer Fire Co . Inc	Bowers		2,610
Brandywine Hundred Fire Co . No 1	Bellefonte		2,610
Camden-Wyoming Fire Co	Camden		2,610
Carlisle Fire Co	Milford		2,610
Cheswold Volunteer Fire Co	Cheswold		2,610
Christiana Fire Co	Christiana		2,610
Claymont Fire Co	Claymont		2,610
Cranston Heights Fire Co.	Cranston Heights		2,610
Dagsboro Volunteer Fire Co	Dagsboro		2,610
Delaware City Fire Co	Delaware City		2,610
Delmar Fire Department	Delmar		2,610
Ellendale Volunteer Fire Co	Ellendale		2,610
Elsmere Fire Co	Elsmere		2,610
Felton Community Fire Co	Felton		2,610
Five Points Fire Co No 1	Richardson Park		2,610

Frankford Volunteer Fire Co. No. 1	Frankford	2,610
Frederica Volunteer Fire Co.	Fredenca	2,610
Goodwill Fire Co. No. 1	New Castle	2,610
Greenwood Volunteer Fire Co	Greenwood	2,610
Gumboro Volunteer Fire Co., Inc	Gumboro	2,610
Harrington Fire Co.	Harrington	2,610
Hartly Volunteer Fire Co., Inc	Hartly	2,610
Holloway Terrace Fire Co.	Holloway Terrace	2,610
Hockessin Fire Co	Hockessin	2,610
Laurel Fire Department, Inc	Laurel	2,610
Leipsic Volunteer Fire Co.	Leipsic	2,610
Lewes Fire Department, Inc	Lewes	2,610
Magnolia Volunteer Fire Co.	Magnolia	2,610
Mill Creek Fire Co	Marshallton	2,610
Millville Volunteer Fire Co., Inc	Millville	2,610
Milton Volunteer Fire Co.	Milton	2,610
Minquadale Fire Co.	Minquadale	2,610
Minquas Fire Co. No. 1	Newport	2,610
Port Penn Volunteer Fire Co	Port Penn	2,610
Rehoboth Beach Volunteer Fire Co , Inc	Rehoboth Beach	2,610
Roxanna Volunteer Fire Co.	Roxanna	2,610
Seaford Volunteer Fire Co , Inc	Seaford	2,610
Selbyville Volunteer Fire Co , Inc	Selbyville	2,610
Slaughter Beach Memorial Fire Co	Slaughter Beach	2,610
Talleyville Fire Co , Inc	Talleyville	2,610
Wilmington Manor Volunteer Fire Co., Inc	Wilmington Manor	2,610
	TOTAL	\$ 114,840

(c) There is appropriated to the listed fire companies the following sums to be used for the maintenance and operation of rescue trucks in the public service:

Aetna Hose, Hook and Ladder Co.	Newark	\$ 2,610
Bethany Beach Volunteer Fire Co.	Bethany Beach	2,610
Blades Volunteer Fire Co.	Blades	2,610
Bowers Volunteer Fire Co., Inc.	Bowers	2,610
Brandywine Hundred Fire Co No 1	Bellefonte	2,610
Bridgeville Volunteer Fire Co.	Bridgeville	2,610
Camden-Wyoming Fire Co.	Camden	2,610
Carlisle Fire Co	Milford	2,610
Cheswold Volunteer Fire Co.	Cheswold	2,610
Christiana Fire Co	Christiana	2,610
Citizens' Hose Co No 1, Inc.	Smyrna	2,610
Claymont Fire Co	Claymont	2,610
Clayton Fire Co	Clayton	2,610
Cranston Heights Fire Co.	Cranston Heights	2,610
Dagsboro Volunteer Fire Co.	Dagsboro	2,610
Delaware City Fire Co.	Delaware City	2,610
Delmar Fire Department	Delmar	2,610
Robbins Hose Co (Dover Fire Dept.)	Dover	2,610
Elsmere Fire Co	Elsmere	2,610
Farmington Volunteer Fire Co	Farmington	2,610
Felton Community Fire Co	Felton	2,610
Five Points Fire Co No 1	Richardson Park	2,610

Fredena Volunteer Fire Co	Friederica	2,610
Georgetown Fire Co	Georgetown	2,610
Greenwood Fire Co No 1	Greenwood	2,610
Goodwill Fire Co No 1	New Castle	2,610
Gumboro Volunteer Fire Co., Inc	Gumboro	2,610
Harrington Fire Co	Harrington	2,610
Hartly Volunteer Fire Co Inc	Hartly	2,610
Hockessin Fire Co	Hockessin	2,610
Holloway Terrace Fire Co	Holloway Terrace	2,610
Indian River Volunteer Fire Co	Indian River	2,610
Laurel Fire Dept., Inc	Laurel	2,610
Leipsic Volunteer Fire Co	Leipsic	2,610
Lewes Fire Department, Inc.	Lewes	2,610
Little Creek Volunteer Fire Co	Little Creek	2,610
Magnolia Volunteer Fire Co	Magnolia	2,610
Marydel Volunteer Fire Co	Marydel	2,610
Mill Creek Fire Co	Marshallton	2,610
Millsboro Fire Co	Millsboro	2,610
Millville Volunteer Fire Co., Inc	Millville	2,610
Milton Volunteer Fire Co	Milton	2,610
Minquadale Fire Co	Minquadale	2,610
Minquas Fire Co No 1	Newport	2,610
Odessa Fire Co, Inc	Odessa	2,610
Port Penn Volunteer Fire Co Inc	Port Penn	2,610
Rehoboth Beach Volunteer Fire Co Inc	Rehoboth Beach	2,610
Roxanna Volunteer Fire Co	Roxanna	2,610
Seaford Volunteer Fire Department, Inc	Seaford	2,610
Selbyville Fire Co., Inc	Selbyville	2,610
Slaughter Beach Memorial Fire Co	Slaughter Beach	2,610
South Bowers Fire Co.	South Bowers	2,610
Ellendale Volunteer Fire Co	Ellendale	2,610
Houston Volunteer Fire Co	Houston	2,610
Talleyville Fire Co., Inc	Talleyville	2,610
Townsend Fire Co, Inc	Townsend	2,610
Volunteer Hose Co Inc	Middletown	2,610
Wilmington Manor Volunteer Fire Co., Inc	Wilmington Manor	2,610
	TOTAL	\$ 151,380

(d) There is appropriated to the listed fire companies the following sums to be used for the maintenance of aerial or platform trucks and for the training of personnel in the techniques of extinguishing high-rise fires throughout Delaware.

New Castle County

Aetna Hose, Hook and Ladder Co	Newark	\$ 3,891
Brandywine Hundred Fire Co No 1	Bellefonte	3,891
Christiana Fire Co	Christiana	3,891
Claymont Fire Co	Claymont	3,891
Delaware City Fire Co	Delaware City	3,891
Elsmere Fire Co	Elsmere	3,891
Five Points Fire Co No 1	Richardson Park	3,891
Goodwill Fire Co No 1	New Castle	3,891

Hockessin Fire Co.	Hockessin	3,891
Mill Creek Fire Co.	Marshallton	3,891
Talleyville Fire Co., Inc.	Talleyville	3,891
Volunteer Hose Co., Inc.	Middletown	3,891
Wilmington Manor Volunteer Fire Co.	Wilmington Manor	3,891

Kent County

Carlisle Fire Co.	Milford	\$	3,891
Citizens' Hose Co. No. 1, Inc.	Smyrna		3,891
Hartly Volunteer Fire Co., Inc.	Hartly		3,891
Robbins Hose Co., (Dover Fire Dept.)	Dover		3,891

Sussex County

Bethany Beach Volunteer Fire Co.	Bethany Beach	\$	3,891
Delmar Fire Department, Inc.	Delmar		3,891
Georgetown Fire Co., Inc.	Georgetown		3,891
Lewes Fire Department, Inc.	Lewes		3,891
Millsboro Fire Co.	Millsboro		3,891
Milton Volunteer Fire Co., Inc.	Milton		3,891
Rehoboth Beach Volunteer Fire Co., Inc.	Rehoboth Beach		3,891
Seaford Volunteer Fire Co., Inc.	Seaford		3,891
Selbyville Volunteer Fire Co., Inc.	Selbyville		3,891
	TOTAL	\$	101,166

(e) There is appropriated to the listed fire companies the following sums to be used for the maintenance and operation of rescue boats in the public service:

Blades Volunteer Fire Co., Inc.	Blades	\$	2,358
Delaware City Fire Co.	Delaware City		2,358
Goodwill Fire Co. No. 1	New Castle		2,358
Holloway Terrace Fire Co.	Holloway Terrace		2,358
Leipsic Volunteer Fire Co.	Leipsic		2,358
Little Creek Volunteer Fire Co.	Little Creek		2,358
Milton Volunteer Fire Co.	Milton		2,358
Port Penn Volunteer Fire Co., Inc.	Port Penn		2,358
Roxanna Volunteer Fire Co.	Roxanna		2,358
Seaford Volunteer Fire Co., Inc.	Seaford		2,358
South Bowers Fire Co.	South Bowers		2,358
	TOTAL	\$	25,938

(f) There is appropriated to the Mayor and Council of Wilmington the following sums to be used for

(i) The prevention and extinguishment of fires throughout the City of Wilmington and for the maintenance of the apparatus and equipment of the 7 fire companies organized and equipped in the City.

\$133,392

(ii) The maintenance of aerial or platform trucks and for the training of personnel in the techniques of extinguishing high-rise fires throughout the City of Wilmington. \$ 7,782

(iii) The maintenance and operation of rescue boats in the public service. \$ 2,358

TOTAL \$143,532

(g) There is appropriated to the listed fire companies the following sums to help level up the insurance premium tax revenues to be used for the maintenance of apparatus and equipment:

Bethany Beach Volunteer Fire Co.	Bethany Beach	\$	24,990
Blades Volunteer Fire Co., Inc.	Blades		24,990
Bowers Volunteer Fire Co., Inc.	Bowers		24,990
Bridgeville Volunteer Fire Co.	Bridgeville		24,990
Camden-Wyoming Fire Co.	Camden		24,990
Carlisle Fire Co.	Millford		24,990
Cheswold Volunteer Fire Co.	Cheswold		24,990
Citizens' Hose Co. No. 1, Inc.	Smyrna		24,990
Clayton Fire Co.	Clayton		24,990
Dagsboro Volunteer Fire Co.	Dagsboro		24,990
Delmar Fire Department	Delmar		24,990
Robbins Hose Co., (Dover Fire Dept.)	Dover		24,990
Ellendale Volunteer Fire Co.	Ellendale		24,990
Farmington Volunteer Fire Co.	Farmington		24,990
Felton Community Fire Co.	Felton		24,990
Frankford Volunteer Fire Co.	Frankford		24,990
Frederica Volunteer Fire Co.	Frederica		24,990
Georgetown Fire Co., Inc.	Georgetown		24,990
Greenwood Volunteer Fire Co.	Greenwood		24,990
Gumboro Volunteer Fire Co., Inc.	Gumboro		24,990
Harrington Fire Co.	Harrington		24,990
Hartly Volunteer Fire Co.	Hartly		24,990
Houston Volunteer Fire Co.	Houston		24,990
Indian River Volunteer Fire Co.	Indian River		24,990
Laurel Fire Department, Inc.	Laurel		24,990
Leipsic Volunteer Fire Co.	Leipsic		24,990
Lewes Fire Department, Inc.	Lewes		24,990
Little Creek Volunteer Fire Co.	Little Creek		24,990
Magnolia Volunteer Fire Co.	Magnolia		24,990
Marydel Volunteer Fire Co., Inc.	Marydel		24,990
Millsboro Fire Co.	Millsboro		24,990
Milton Volunteer Fire Co.	Milton		24,990
Millville Volunteer Fire Co.	Millville		24,990
Rehoboth Beach Volunteer Fire Co.	Rehoboth Beach		24,990
Roxanna Volunteer Fire Co.	Roxanna		24,990
Seaford Volunteer Fire Dept., Inc.	Seaford		24,990
Selbyville Volunteer Fire Co., Inc.	Selbyville		24,990
Slaughter Beach Memorial Fire Co.	Slaughter Beach		24,990
South Bowers Fire Co.	South Bowers		24,990
	TOTAL	\$	974,610

(h) There is appropriated to the listed organizations the following sums to be used for the operation and maintenance of ambulances in the public service:

Mid-Sussex Rescue Squad, Inc.	Millsboro	\$	2,610
American Legion, Sussex Post #8	Georgetown		2,610
American Legion, Kent Post #14	Smyrna		2,610
Sussex Memorial Post #7422, V.F.W.	Millsboro		2,610
TOTAL		\$	10,440
TOTAL - Section 3		\$	2,665,266

**Section 4.** (a) Funds are hereby appropriated to the following grants-in-aid in the amounts listed and shall be used to furnish services through a duly selected service officer to Delaware Veterans of the Armed Forces of the United States, their widows and orphans, by providing contact services in Sussex, Kent and New Castle Counties:

American Legion, Department of Delaware	\$32,666
Veterans of Foreign Wars, Department of Delaware	32,666
Disabled American Veterans, Department of Delaware	27,217
Vietnam Veterans of America, Department of Delaware	27,217
Paralyzed Veterans of America, Department of Delaware	27,217

(b) Funds are hereby appropriated to the following grants-in-aid in the amounts listed for operations expenses:

Veterans of Foreign Wars, Department of Delaware	\$	7,943
American Legion, Department of Delaware		7,943
Disabled American Veterans, Department of Delaware		7,943
Vietnam Veterans of America		7,943
Jewish War Veterans of the U.S., Department of Delaware		4,548
Delaware Veterans of World War I		3,396
Paralyzed Veterans of America, Department of Delaware		6,810
American Veterans of World War II, Korea & Vietnam		7,000

(c) Expenses for Memorial Day programs incurred by local Posts in Sussex, Kent and New Castle Counties shall be reimbursed out of operation expenses appropriated in subsection (b) of this Section on vouchers properly submitted to and approved by their representative veterans' organizations

(d) The sum of \$6,420 is hereby appropriated to the American Legion, Department of Delaware, for the bearing of expenses incident to the holding of Boys' State.

(e) The sum of \$6,420 is hereby appropriated to the American Legion Auxiliary, Department of Delaware for the bearing of expenses incident to the holding of Girls' State.

(f) The sum of \$2,565 is hereby appropriated to the American Legion, Department of Delaware, for the bearing of expenses incident to the holding of Trooper Youth Week in conjunction with the Delaware State Police

(g) The funds appropriated by this Section shall be paid to the Finance Officer of the respective veterans' organizations, upon warrants signed by the proper Finance Officer and approved by the Secretary, Department of Finance.

TOTAL - Section 4	\$	2,159,914
-------------------	----	-----------

**Section 5** Section 2 of this Act appropriates \$200,000 to the Delaware State Fair. Of that amount, \$80,000 shall be used for prizes for achievements in agriculture, animal raising and in works of manual training and the domestic arts to be awarded at the annual State Fair and shall be paid by the State Treasurer at the beginning of the first quarter of Fiscal Year 1996. Of the remaining \$120,000, \$5,000 shall be used for purses on Governor's Day and the remaining \$115,000 shall be paid in quarterly allotments, as provided in Chapter 65, Section 6505 of Title 29, Delaware Code.

**Section 6.** The appropriation in Section 2 of this Act to Camp Barnes, Inc. shall be used for the purpose of maintaining and operating Camp Barnes for the recreation of deserving youths from throughout the State.

**Section 7.** The sums appropriated to the various Senior Centers in Section 1 of this Act shall be made available to the Division of Aging in order to meet the State's matching requirement for federal funds appropriated under the Older Americans Act of 1965, as amended. Those senior centers receiving funds under the Older Americans Act of 1965, as amended, shall present to the Division of Aging a proposal for expenditure of State funds. The proposal submitted to the Division of Aging shall be prepared in accordance with the guidelines established for the administration of programs under the Older Americans Act.

**Section 8.** In order to be considered for a Grant-in-Aid Appropriation under Section 1 or Section 2 of this Act, an agency must meet the following criteria:

- 1 Be incorporated, non-profit (or under umbrella of parent organization which is incorporated non-profit).
- 2 Have By-laws that clearly state the purpose of the Corporation and include definition of duties of Board of Directors.
- 3 Have an active, community-represented, volunteer Board of Directors that sets policies, goals and objectives, and maintains minutes of regularly scheduled meetings and any special meetings.
- 4 Have programs that are unduplicated and satisfy unmet human needs of the community.
- 5 Have personnel policies including job descriptions and classifications.
- 6 Employ no member of the General Assembly on a salaried basis or in exchange for any emolument. Any elected official who was employed by an organization which received a Grant-in-Aid prior to their election shall be exempt from this provision.
- 7 Have competent executives, competent staffing and reasonable facilities.
- 8 Practice non-discrimination.
- 9 Have accounting (budget) procedures and an annual audit.
- 10 Use funds in accordance with the application.
- 11 Demonstrate community support.
- 12 Request funds only for a program which does not receive full funding from other sources of revenue.

**Section 9** (a) No funds appropriated in this Act shall be expended in a political campaign or for partisan political purposes.

(b) No funds appropriated in this Act may be used to hire lobbyists.

**Section 10** The Controller General may from time to time conduct performance audits of any non-state agency for which funds are appropriated in this Act.

**Section 11.** Funds appropriated in this Act shall not be used by any agency to provide child day care. It is the intent of the General Assembly that no funds will be appropriated in Fiscal Years 1997 and 1998 in grants-in-aid to agencies for the purchase of capital equipment, relocation, rehabilitation, renovation or purchase of buildings. Organizations will not be eligible for consideration of a grant-in-aid appropriation unless they have been incorporated and operating for a two-year period prior to June 30th of the fiscal year in which they apply for funding for the following fiscal year.

**Section 12.** Paragraph (d), Chapter 65, Title 29, Delaware Code, provides that monies appropriated for grants-in-aid in Fiscal Year 1997 shall be paid in quarterly installments. For Fiscal Year 1997, such payments will be made on July 10, October 1, January 1, and April 1. Upon notification by the Chairman of the Joint Finance Committee, the State Treasurer shall be directed to withhold such installment payment(s). An installment payment may be delayed or withheld if the grant-in-aid recipient because of, but not limited to, the following:

- (a) Has not submitted a quarterly statement of expenditures if required to do so;
- (b) Expended funds from the grant-in-aid for purposes not intended by the General Assembly;
- (c) Expended funds for day care, purchase of capital equipment, relocation, renovation, rehabilitation or purchase of buildings; and
- (d) Agency is no longer in operation.
- (e) Failure to pay Corporation Franchise Tax.

**Section 13.** (a) It is the intent of the General Assembly that each Grant-in-Aid recipient shall submit one of the following with its application for a grant award in Fiscal Year 1998:

- (i) An audit prepared by a Certified Public Accountant covering the prior full fiscal year of the receiving agency, or
  - (ii) Balance Sheet reflecting total Assets, Liabilities, and Fund Balances covering the prior fiscal year of the receiving agency; Statements of Support, Revenue and Expenses and Changes in Fund Balances covering the prior fiscal year of the receiving agency; and Statements of Functional Expenses covering the prior fiscal year of the receiving agency.
- (b) Fire companies listed in this Act shall submit financial information on the form approved by the State Treasurer, the Budget Director and the Controller General. The listed fire companies are exempt from the provisions of Subsection (a) of this Section.
- (c) Veterans' organizations in Subsection (4) of this Act are exempt from the provisions of this Section
- (d) Recipients of the appropriations for Aid to Local Law Enforcement shall be exempt from the provisions of this Section.
- (e) Non-compliance by a Grant-in-Aid recipient with the provisions of this Section shall automatically disqualify the applicant for consideration of a Grant-in-Aid award in Fiscal Year 1998.
- (f) For Fiscal Year 1997, it is the legislative intent that a Grant-in-Aid recipient listed in Sections 1 or 2 of this Act shall not be entitled to receive any of the funds appropriated by this Act unless certain financial information has been received by the Office of the Controller General on or before July 25, 1996. Such financial information shall be in the form as defined in Subsection (a)(i) or Subsection (a)(ii) of this Section covering full fiscal year of the receiving agency. If any Grant-in-Aid recipient fails to comply with this Subsection (f) the funds appropriated by this Act to that recipient shall revert to the General Fund of the State.

**Section 14.** This Act is a supplementary appropriation and the monies appropriated shall be paid by the State Treasurer from General Fund monies not otherwise appropriated. Any funds remaining unexpended or unencumbered as of June 30, 1997, shall revert to the General Fund of the State of Delaware

**Section 15** (a) The State Treasurer is authorized to take the necessary steps to make a total payment of the appropriation in Section 2 of this Act at the beginning of the first quarter of Fiscal Year 1997 for the agencies as follows:

Association for the Rights of Citizens with Mental  
Retardation in Delaware  
City of New Castle - Separation Day  
Delaware Academy of Science, Inc. - Iron Hill Museum  
Delaware Association for Blind Athletes  
Camp Barnes, Inc.  
Delaware City Day Committee  
Harrison House Community Programs, Inc  
Miss Delaware Scholarship Pageant, Inc.  
National Multiple Sclerosis Society  
New Castle Historical Society  
Peninsula United Methodist Homes, Inc - SOS  
Sojourner's Place, Inc.  
William "Hicks" Anderson Community Center -  
Senior Physical Fitness Program

(b) The State Treasurer is authorized to take the necessary steps to make a total payment of the appropriation in Section 1 of this Act at the beginning of the first quarter of Fiscal Year 1996 for the municipalities which receive \$6,000 or less from the line item Aid to Local Law Enforcement

(c) The State Treasurer is authorized to take the necessary steps to make a total payment of the appropriation to any Grant-in-Aid recipient receiving an amount of \$6,000 or less listed in Section 2 of this Act at the beginning of the first quarter of Fiscal Year 1997

(d) The State Treasurer is authorized to take the necessary steps to make a total payment of the appropriation to fire companies listed in Section 3 of this Act at the beginning of the first quarter of Fiscal Year 1997

**Section 16** (a) Section 2 of this Act appropriates a one-time item to the Department of Public Safety - Aid to Local Law Enforcement in the amount of one million four hundred thousand dollars (\$1,400,000) for the purpose of contracting with local law enforcement agencies for Emergency Illegal Drug Enforcement programs

(b) There is hereby established a Drug Emergency Fund for Local Law Enforcement Agencies to be administered by the State Aid to Local Law Enforcement Committee (SALLE) and disbursed by the Department of Public Safety under authorized contracts.

(c) Local law enforcement agencies are encouraged to develop and maintain increased programs to combat illegal drug manufacturing, sale, and abuse. The Department of Public Safety may contract with any local law enforcement agency which qualifies under standards established by the SALLE Committee to establish and maintain emergency programs to increase their efforts to combat illegal drug use and abuse. No part of this appropriation may be used to supplant funds already committed by a local law enforcement agency to regular police operations, or to pay salaries of full-time police officers and supporting personnel authorized by said agency as of June 30, 1991

(d) The funds appropriated in Section 2 for the Department of Public Safety - Aid to Local Law Enforcement shall be allocated according to the formula presently used by the SALLE Committee as revised from time to time

(e) Local law enforcement agencies may combine their allocations, upon approval of the SALLE Committee, to support a pool arrangement to fund a contiguous area served by more than one local law enforcement agency

(f) Each local law enforcement agency contracting for an allocation shall, not later than April 1, 1997, report in detail the plan under which such funds are being expended, and any other information requested by the SALLE Committee. The SALLE Committee shall report to the General Assembly of the State of Delaware on or before May 1, 1997, as to the agencies that were awarded grants from these funds, the amount of the grant, and the purpose of the grant.

**Section 17.** Section 1 of this Act makes an appropriation to the Department of Health & Social Services, Public Health, Emergency Medical Services (35-05-30), for the state component of the operational costs associated with each county's paramedic service for Advanced Life Support. These funds shall be disbursed by Emergency Medical Services on a quarterly basis to counties that operate approved programs.

Emergency Medical Services shall have an audit performed by the State Auditor annually to insure that reimbursement to the counties for the State share of costs was for approved Advanced Life Support Services Adjustments shall be made to the final quarterly reimbursement based on the audit results.

**Section 18.** For Fiscal Year 1997, the remaining balance in the Fiscal Year 1996 account (35-05-30-01-81) shall remain as a continuing appropriation and shall not be subject to reversion until June 30, 1997.

**Section 19.** Appropriations made in Section 1 of this Act to Emergency Medical Services and Aid to Local Law Enforcement and in Section 2 of this Act to One-time Items--Aid to Local Law Enforcement shall not be subject to the provisions in Sections 11, 12 and 13. Funds appropriated to Aid to Local Law Enforcement shall not be subject to reversion at the end of the fiscal year if unexpended or unencumbered, but shall be continued for a period of up to three years.

**Section 20.** For F.Y. 1997, direct paramedic initial training, recertification training and testing for the Statewide paramedic program shall be offered at a single site.

**Section 21.** Section 1 of this Act appropriates funds to Aid to Local Law Enforcement. These funds shall be distributed based on (a) \$3,000 to each police agency; (b) any funds in excess of "(a)" based on the ratio of the number of police officers each police agency has to the total number of police in all agencies.

**Section 22.** Section 2 of this Act appropriates funds to Eastlawn Area Human Services, Inc. None of these funds, nor any Federal, State or Local Government funds, shall be expended for the purchase of television, cable T.V. and/or radio broadcasting services.

**Section 23.** Section 2 of this Act appropriates funds to Elsmere Recreation, Inc. Of the total appropriation, \$1,000 shall be used for a boxing program and \$2,100 shall be used for a Police Park Program

**Section 24.** Section 2 of this Act appropriates funds to the Delaware State Police Museum, Inc. These funds may not be used for capital/construction costs.

**Section 25.** Section 2 of this Act appropriates \$79.0 to the Neighborhood House, Inc. Of that amount, \$14.0 is to be used to support the Cab Calloway School for the Performing Arts After-School Tutorial Program

**Section 26.** Section 2 of this Act provides an appropriation in the category of Family and Youth Services for the Shepherd Place in the amount of \$35,000. Officers of Shepherd Place shall provide assurance to the co-chairs of the Joint Finance Committee substantiating their grant-in-aid request for FY 1997, with an explanation of errors made in the application.

**Section 27.** Section 1 of this Act includes an appropriation in the one-time items in the amount of \$60,000 for the Delaware Volunteer Firemen's Association. This amount shall be prorated to each volunteer fire company based on the expenditure for Hepatitis B made by that volunteer fire company as indicated in a letter, dated April 24, 1995 to the Controller General from the Delaware Volunteer Firemen's Association.

Approved July 1, 1996

CHAPTER 427

FORMERLY

HOUSE BILL NO. 479

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO STATE SYMBOLS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 3 of Title 29 of the Delaware Code by adding thereto a new section to read:

“§ 313. State fossil.

The official State fossil is the belemnite.”

Approved July 2, 1996

## CHAPTER 428

## FORMERLY

SENATE BILL NO. 372  
AS AMENDED BY SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO MOTOR  
VEHICLE REPAIRS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. This Act shall be referred to as "The Auto Repair Fraud Prevention Act of 1996."

Section 2. Amend Subtitle II, Title 6 of the Delaware Code by inserting a new Chapter 49A to follow Chapter 49, to read as follows:

## "CHAPTER 49A. AUTO REPAIR FRAUD PREVENTION

## § 4901A. Purpose.

The purpose of this Act is to safeguard the public against fraudulent auto repair practices thereby enhancing public confidence in legitimate auto repair facilities and mechanics.

## § 4902A. Definitions.

For the purposes of this Chapter, the following definitions shall apply:

(a) 'Automotive repair facility' means any person who performs auto repair work on a motor vehicle for financial profit.

(b) 'Motor vehicle' is as defined by 21 Del.C. § 101(20).

(c) 'Person' includes an individual, corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(d) 'Auto repair work' means performing or attempting to perform repairs and/or maintenance on a motor vehicle for financial profit.

(e) 'Pattern of violations' means three (3) or more violations within a one-year period.

## § 4903A. Unlawful Practices.

(a) Deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with the intent that others rely upon such concealment, suppression, or omission of any material fact in connection with auto repair work by any automotive repair facility, whether or not any person has in fact been misled, deceived, or damaged thereby, or the act, use, or employment by any auto repair facility of a deceptive trade practice in connection with auto repair work shall constitute an unlawful practice.

(b) Acts or practices by an automotive repair facility prohibited by subsection (a) shall include but are not limited to:

(1) Refusing to return a customer's motor vehicle because the customer refused to pay for unauthorized auto repair work in violation of § 4907A of this Chapter;

(2) Misrepresenting that auto repair work has been made to a motor vehicle;

(3) Misrepresenting that auto repair work is necessary to a motor vehicle repair;

(4) Misrepresenting that the motor vehicle is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause significant damage to the vehicle;

(5) Misrepresenting that the motor vehicle will or will not pass state inspection requirements or is not otherwise in compliance with state or federal requirements in connection with soliciting auto repair work;

(6) Performing unauthorized auto repair work in connection with a misrepresentation;

(7) Fraudulently altering any customer contract, estimate, invoice, or other document;

(8) Fraudulently misusing a customer's credit card; or

(9) engaging in a pattern of violations of §§ 4904A, 4905A, 4906A, or 4907A or violating §§ 4904A, 4905A, 4906A or 4907A of this Chapter with the intent to hinder the discovery of practices or acts prohibited by this section.

§ 4904A. Estimate requirements for auto repair work.

(a) Written estimate and authorization requirements.

Unless waived pursuant to subsection (b) of this section by the customer or by a person the auto repair facility reasonably believes is acting on the customer's behalf, the automotive repair facility shall, before beginning any auto repair work and/or transmission repair diagnosis on a motor vehicle, give the customer a written statement which contains:

(1) The estimated completion date;

(2) The estimated price for the auto repair work including parts and labor;  
and

(3) The estimated surcharge, if any.

(b) Oral estimates and authorization.

If a customer, or a person the auto repair facility reasonably believes is acting on the customer's behalf, waives his or her right to a written estimate, the automotive repair facility shall orally provide to the customer, or a person the automotive repair facility reasonably believes to be acting on a customer's behalf, the estimated price and completion date before beginning any auto repair work; provided, however, the person giving the oral estimate shall make a written record of the requirements set forth in subsection (a)(1)-(a)(3) of this section, sign or initial the written document, and retain such document for a period of no less than two years.

(c) Prohibited charges.

An automotive repair facility shall not charge a customer without the consent of the customer, or a person the automotive repair facility reasonably believes is acting on behalf of the customer, any amount which exceeds the estimate by 20% or \$50.00, whichever is less. Any charges which exceed 20% or \$50.00, whichever is less, must comply with the requirements of subsection (a) and (b) of this Section.

## § 4905A. Invoice Requirements.

## (a) Work description.

An automotive repair facility shall prepare an invoice which describes in all material respects:

(1) Auto repair work done by it, including all warranty work;

(2) All parts supplied by it;

(3) All labor performed by it. To the extent a charge for labor is not based on actual hours worked, the invoice shall specify that the labor charge is based on a flat rate. Notwithstanding the above, if the labor charge is part of a packaged price product, such as an oil change, the invoice need not specify the labor component of that charge; and

(4) All auto repair work that is performed by persons other than the auto repair facility. The auto repair facility shall retain the name, address, and telephone number of such other persons performing auto repair work and disclose such information upon request of the customer or a person it reasonably believes to be acting on the customer's behalf.

## (b) Used, rebuilt, or reconditioned parts.

The invoice shall state clearly if any used, rebuilt, or reconditioned parts were used in the auto repair work and/or if a part of a component system supplied is composed of used, rebuilt, or reconditioned parts.

## (c) Copies of invoices.

The automotive repair facility shall give the customer a copy of the invoice and retain a copy for no less than two years.

## § 4906A. Replaced Parts -- Requirement for Return to the Customer.

An automotive repair facility shall offer to return all replaced parts to the customer, or a person acting on his or her behalf, except parts which are returned to a manufacturer or distributor, hazardous materials, or other items which the automotive repair facility is otherwise required to properly dispose of or recycle. Nothing herein shall require the auto repair facility to retain replaced parts after final invoice.

## § 4907A. Unauthorized Repairs.

An automotive repair facility may not charge a customer for repairs not originally authorized or requested by the customer, or a person the auto repair facility reasonably believes is acting on the customer's behalf, unless the automotive repair facility receives written or oral permission from the customer in conformance with this chapter. To the extent a charge does not exceed an estimate by 20% or \$50.00, whichever is less, no cause of action pursuant to

§ 4909A(c) shall accrue. Nothing in this section shall preclude enforcement pursuant to § 4903A(b)(6) and (9).

## § 4908A. Required notice to customers.

(1) All auto repair shops not otherwise complying with subsection (2) of this section shall post a sign, in a manner conspicuous to the public, which states as follows:

(a) The customer is entitled to receive a written or oral estimate;

(b) No auto repair work charge may exceed the estimate without the customer's consent;

(c) The facility shall offer to return to the consumer all replaced parts except those under warranty or trade-in parts returned to a manufacturer or distributor; and

(d) Complaints can be made to the Consumer Protection and Fraud Division of the Delaware Department of Justice.

(2) To the extent an auto repair facility does not post a sign pursuant to subsection (1) of this section, an automotive repair facility shall, prior to performing auto repair work, disclose to the customer on a separate document or the written estimate itself the following language:

**'PLEASE READ CAREFULLY**

**CHECK ONE OF THE STATEMENTS BELOW AND SIGN**

**I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A WRITTEN ESTIMATE.**

**I REQUEST A WRITTEN ESTIMATE.**

**I REQUEST AN ORAL ESTIMATE.**

**I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE REPAIR COSTS DO NOT EXCEED \$\_\_\_\_\_. THE SHOP MAY NOT EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.**

**I WAIVE MY RIGHT TO AN ESTIMATE.**

**SIGNED \_\_\_\_\_ DATE \_\_\_\_\_'**

The above language shall be in bold typeset at least as large as the size of the print in the main body of the document. The requirements of this section shall be effective as of January 1, 1997.

**§ 4909A. Enforcement and Remedies.**

(a) The Attorney General shall have the same authority to enforce, remedy and otherwise carry out the provisions of this chapter as is provided by § 2517 of Title 29, §§ 2511-2527 and §§ 2531-2536 of Title 6 of the Delaware Code.

(b) Any violation of § 4903A of this chapter shall be deemed an unlawful practice in violation of § 2513 of this title and willful violations of § 4903A of this chapter shall be punishable in accordance with § 2513(c) and/or § 2581 of this title.

(c) Transactions where an automotive repair facility has violated the requirements of §§ 4903A, 4904A, 4905A, 4906A, and/or 4907A of this chapter shall be voidable by the consumer in actions brought in the Justice of Peace Courts. In successful actions brought by consumers under this subsection, the automotive repair facility shall be liable to the customer for twice the amount of any consideration obtained in violation of this chapter, and the costs of the action; provided, however, the customer must first allow the auto repair facility the opportunity to resolve the dispute prior to filing an action under this subsection; and the Court may further award a customer reasonable attorneys' fees.

Nothing in this subsection shall prohibit a person from otherwise seeking a recovery in an action for damages against an automotive repair facility in a court of competent jurisdiction.

(d) The remedies and penalties provided for in this section are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to

any other provisions of law including but not limited to state and/or federal criminal prosecutions and/or common law or statutory actions brought by private parties.”

Approved July 2, 1996

CHAPTER 429

FORMERLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 347

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO SALE OF MOTOR VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 21, Delaware Code by inserting as new section 2515 the following:

“§2515. Sale of motor vehicles lacking catalytic converters.

(a) No person shall sell a motor vehicle from which the catalytic converter has been removed without first advising the purchaser in writing, and obtaining the purchaser's signature upon said notification, that the catalytic converter is missing and that the vehicle may not pass inspection. It shall be a defense to any cause of action brought pursuant to this section if the motor vehicle was not required by Federal laws or regulations to have a catalytic converter as part of its equipment.

(b) Any person who sells a motor vehicle in violation of this section shall make restitution to the purchaser in an amount reasonably necessary to pay for:

- (1) parts and labor to replace the catalytic converter, and
- (2) all reasonable costs and attorneys' fees for bringing an action pursuant to this section.”

Approved July 2, 1996

CHAPTER 430

FORMERLY

SENATE BILL NO. 192  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 178, VOLUME 69, LAWS OF DELAWARE AND TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF COSMETOLOGY AND BARBERING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 178 of Volume 69, Laws of Delaware by adding a new Section 3 as follows:

“Section 3. The education provisions of §5107 of this Act shall not apply to anyone licensed prior to its enactment.”

Section 2. Amend §5108(a), Title 24, Delaware Code by deleting the first sentence thereof in its entirety, and by inserting in lieu thereof the following:

“There shall be separate written and practical examinations for licensure for barbering, cosmetology, nail technology, and electrology which shall be professionally developed and used on a national basis. Each of these examinations shall be offered at least semi-annually.”

Approved July 3, 1996

CHAPTER 431

FORMERLY

SENATE BILL NO. 215

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO LIEN OF TAXES AND OTHER CHARGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 29, Title 25 of the Delaware Code by adding the following to §2901(a)(1)f. before the “;”:

“, and fines imposed by any court for local building, housing or sanitation code violations in excess of One Hundred Dollars (\$100) in total per property; the unpaid amounts of such fines may be added to local property tax billings when authorized by local ordinance”.

Approved July 3, 1996

## CHAPTER 432

## FORMERLY

SENATE BILL NO. 238  
AS AMENDED BY SENATE AMENDMENT NO. 1 AND  
HOUSE AMENDMENT NO. 1

AN ACT TO GRANT A VETERANS MILITARY PAY BONUS TO CERTAIN MERCHANT MARINES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. A \$300 Veterans Military Pay Bonus is hereby granted to all Merchant Marines who qualify as veterans under §8720 of Title 29. The Secretary of Finance or her designee shall by regulation distribute the Bonus to Merchant Marines who are Delaware residents as of the date of enactment and who provide sufficient evidence of their eligibility within one year thereof.

Section 2. Upon enactment of this legislation, the Budget Director is hereby authorized to transfer the sum of \$30,000 from available funds in the Budget Office Contingency and One Times - (10-02-04) to the State Treasurer (12-05-01) for the purpose of implementing this Act unless funds have been otherwise allocated for this purpose. Any funds herein transferred but unexpended on June 30, 1996 shall not revert but shall be a continuing appropriation and shall revert to the General Fund of the State of Delaware on June 30, 1997.

Approved July 3, 1996

## CHAPTER 433

## FORMERLY

## SENATE BILL NO. 287

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO TERMINAL RENTAL ADJUSTMENT CLAUSE LEASES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 21 of the Delaware Code by adding a new section 2342 to read as follows:

“§2342. Terminal Rental Adjustment Clauses

In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.”

Approved July 3, 1996

CHAPTER 434

FORMERLY

SENATE BILL NO 308

AN ACT TO AMEND SUBTITLE II, TITLE 6 OF THE DELAWARE CODE RELATING TO OTHER LAWS RELATING TO COMMERCE AND TRADE; AND PROVIDING FOR A UNIFORM FRAUDULENT TRANSFER ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE: its

Section 1. Amend Chapter 13, Subtitle II, Title 6 of the Delaware Code by striking said chapter in its entirety, and substituting in lieu thereof the following:

Chapter 13. FRAUDULENT TRANSFERS

§ 1301. Definitions.

As used in this chapter:

(1) 'Affiliate' means:

(i) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not exercised the power to vote;

(ii) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

(A) as a fiduciary or agent without sole power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(iv) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) 'Asset' means property of a debtor, but the term does not include:

(i) property to the extent it is encumbered by a valid lien;

(ii) property to the extent it is generally exempt under nonbankruptcy law; or

(iii) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) 'Claim' means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) 'Creditor' means a person who has a claim.

(5) 'Debt' means liability on a claim.

(6) 'Debtor' means a person who is liable on a claim.

(7) 'Insider' includes:

(i) if the debtor is an individual,

(A) a relative of the debtor or of a general partner of the debtor;

(B) a partnership in which the debtor is a general partner;

(C) a general partner in a partnership described in clause (B); or

(D) a corporation of which the debtor is a director, officer, or person

in control;

(ii) if the debtor is a corporation,

(A) a director of the debtor;

(B) an officer of the debtor;

(C) a person in control of the debtor;

(D) a partnership in which the debtor is a general partner;

(E) a general partner in a partnership described in clause (D); or

(F) a relative of a general partner, director, officer, or person in

control of the debtor;

(iii) if the debtor is a partnership,

(A) a general partner in the debtor;

(B) a relative of a general partner in, or a general partner of, or a person in control of the debtor;

(C) another partnership in which the debtor is a general partner;

(D) a general partner in a partnership described in clause (C); or

(E) a person in control of the debtor;

(iv) an affiliate, or an insider of an affiliate as if the affiliate were the debtor;

and

(v) a managing agent of the debtor.

(8) 'Lien' means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) 'Person' means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) 'Property' means anything that may be the subject of ownership.

(11) 'Relative' means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) 'Transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) 'Valid lien' means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

§ 1302. Insolvency.

(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation.

(b) A debtor who is generally not paying his debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

§ 1303. Value.

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of Sections 1304(a)(2) and 1305, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

§ 1304. Transfers Fraudulent as to Present and Future Creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor;

or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(b) In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether:

- (1) the transfer or obligation was to an insider;
- (2) the debtor retained possession or control of the property transferred after the transfer;
- (3) the transfer or obligation was disclosed or concealed;
- (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (5) the transfer was of substantially all the debtor's assets;
- (6) the debtor absconded;
- (7) the debtor removed or concealed assets;
- (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

§ 1305. Transfers Fraudulent as to Present Creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

§ 1306. When Transfer Is Made or Obligation Is Incurred.

For the purposes of this chapter:

- (1) a transfer is made:
  - (i) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(1) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee,

(2) if applicable law permits the transfer to be perfected as provided in paragraph (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action,

(3) if applicable law does not permit the transfer to be perfected as provided in paragraph (1), the transfer is made when it becomes effective between the debtor and the transferee,

(4) a transfer is not made until the debtor has acquired rights in the asset transferred;

(5) an obligation is incurred

(i) if oral, when it becomes effective between the parties, or

(ii) if evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

#### § 1307. Remedies of Creditors.

(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 1308, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim,

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by applicable law;

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure,

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property,

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

#### § 1308. Defenses, Liability, and Protection of Transferee.

(a) A transfer or obligation is not voidable under Section 1304(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Section 1307(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) the first transferee of the asset or the person for whose benefit the transfer was made, or

(2) any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(c) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to

- (1) a lien on or a right to retain any interest in the asset transferred;
- (2) enforcement of any obligation incurred; or
- (3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under Section 1304(a)(2) or Section 1305 if the transfer results from:

- (1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
- (2) enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code.

(f) A transfer is not voidable under Section 1305(b):

- (1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;
- (2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or
- (3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

#### § 1309. Extinguishment of Cause of Action.

A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

- (a) under Section 1304(a)(1), within 4 years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;
- (b) under Section 1304(a)(2) or 1305(a), within 4 years after the transfer was made or the obligation was incurred; or
- (c) under Section 1305(b), within one year after the transfer was made or the obligation was incurred.

#### § 1310. Supplementary Provisions.

Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

#### § 1311. Short Title.

This chapter may be cited as the 'Uniform Fraudulent Transfer Act'."

Approved July 3, 1996

CHAPTER 435

FORMERLY

SENATE BILL NO. 334

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO EXEMPTIONS OF FARM TRUCKS FROM MOTOR FUEL TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. AMEND Title 30, Section 5224 by deleting subsection (b) in its entirety and inserting a new subsection (b) to read as follows:

"(b) This chapter shall not apply to any motor vehicle for which the registration and inspection has been exempted pursuant to Title 21, Section 2113 (2)."

Approved July 3, 1996

## CHAPTER 436

## FORMERLY

SENATE BILL NO. 381  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 7 AND 11 OF THE DELAWARE CODE AND CHAPTER 275, VOLUME 70 OF THE LAWS OF DELAWARE RELATING TO HUNTING AND TRAPPING DEVICES, ENVIRONMENTAL MISDEMEANORS AND CERTAIN TECHNICAL CORRECTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend § 704(a), Title 7, Delaware Code, by striking the phrase ", or any drug, poison, chemicals or explosives", and by striking the phrase "snapping turtles and otters," and substituting in lieu thereof the phrase "otters, beavers and rabbits may be trapped and snapping turtles may be trapped or taken with a net in accordance with the regulations of the Department of Natural Resources and Environmental Control."

Section 2. Amend § 44, Chapter 275, Volume 70, Laws of Delaware, by striking the phrase "and redesignating subsection (f) as subsection (c)".

Section 3. Amend § 704, Title 7, Delaware Code, by redesignating subsections (b), (c) and (d) as subsections (c), (d) and (e), respectively, and by inserting a new subsection (b) to read as follows:

"(b) No person shall make use of any drug, poison, chemical or explosive for the purpose of injuring, capturing or killing birds or animals protected by the laws of this State."

Section 4. Amend § 704 (c), Title 7, Delaware Code, as amended, by inserting the phrase "or (b)" after the phrase "subsection (a)".

Section 5. Amend § 97, Chapter 275, Volume 70, Laws of Delaware, by inserting the word "shall" in between the words "and" and "be" as they appear together in the same phrase in § 792 (f).

Section Amend § 106, Chapter 275, Volume 70, Laws of Delaware, by striking the word "sentences" from the title of § 1304 and substituting in lieu thereof the word "sentence", and by striking the word "Environmental" from § 1304(b) and substituting in lieu thereof the phrase "Notwithstanding the classification of misdemeanors in § 4202(a) of Title 11, environmental"

Section 7. Amend § 1311(a), Title 7, Delaware Code, by striking the phrase "environmental protection officer" and substituting in lieu thereof the phrase "law enforcement officer of the Department of Natural Resources and Environmental Control".

Section 8. Amend § 1311(d), title 7, Delaware Code, by striking the phrase "(f) of § 103" and substituting in lieu thereof the phrase "(a) of § 787".

Section 9. Amend § 1311(h), Title 7, Delaware Code, by striking the phrase "fish and wildlife" and substituting in lieu thereof the phrase "Department of Natural Resources and Environmental Control".

Section 10. Amend § 4202(b), Title 11, Delaware Code, by inserting the phrase "or an environmental misdemeanor" in between the word "misdemeanor" and the period ".".

Section 11. Amend § 4204(a), Title 11, Delaware Code, by inserting the phrase ", with the exception of an environmental misdemeanor as defined in § 1304 of Title 7" in between the phrase "Criminal Code" and the period ".".

Approved July 3, 1996

CHAPTER 437

FORMERLY

SENATE BILL NO. 390

AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 19, TITLE 11 OF THE DELAWARE CODE RELATING TO ARREST WITHOUT WARRANT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1904 of Title 11 of the Delaware Code by adding a new subsection (c) as follows:

"(c) Notwithstanding any other provision of law to the contrary, an arrest by a peace officer without a warrant for violation of probation is lawful whenever the peace officer has a reasonable ground to believe that the person to be arrested has committed a new offense within or without the State during a period of probation and has thereby violated a condition of said probation imposed upon the person by a court of this State. A reasonable ground to believe that a person has committed a new offense may be based upon, but is not limited to, a finding of probable cause to issue a warrant for the new offense made by a neutral magistrate, an indictment returned by a grand jury for the new offense, or an information for the new offense filed in any court.

Any person arrested pursuant to the provisions of this subsection shall be processed in accordance with the provisions of §1909 of this Title, at which time bail shall be set on both the new offense and the violation of probation."

Approved July 3, 1996

## CHAPTER 438

## FORMERLY

## SENATE BILL NO. 393

## AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO FEMALE GENITAL MUTILATION

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 5, Subchapter V, Title 11 of the Delaware Code by adding a new §1113 as follows:

"§1113. Female Genital Mutilation.

(a) A person is guilty of female genital mutilation when:

(1) A person knowingly circumcises, excises, or infibulates the whole or any part of the labia majora, labia minora, or clitoris of a female minor; or

(2) A parent, guardian or other person legally responsible or charged with the care or custody of a female minor allows the circumcision, excision or infibulation, in whole or in part, of such minor's labia majora, labia minora, or clitoris.

(b) Female genital mutilation is a Class E felony.

(c) It is not a defense to a violation that the conduct described in (a) above is required as a matter of custom, ritual or standard practice, or that the minor on whom it is performed or the minor's parent or legal guardian consented to the procedure.

(d) A surgical procedure is not a violation of this section if the procedure is:

(1) Necessary to the health of the minor on whom it is performed and is performed by a licensed physician under §1720 of Title 24 or a physician-in-training under the supervision of a licensed physician; or

(2) Performed on a minor who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a licensed physician under §1720 of Title 24 or a physician-in-training under the supervision of a licensed physician, or a licensed midwife under §3336 of Title 18."

Approved July 3, 1996

CHAPTER 439

FORMERLY

SENATE BILL NO. 398  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO REPEAL THE BULK TRANSFER PROVISIONS OF THE UNIFORM  
COMMERCIAL CODE OF THE DELAWARE CODE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Article 6 and Section 9-111 of Title 6 of the Delaware Code by striking said Article and Section in their entirety.

Section 2. Amend Subsection (2), Section 1-105 of Title 6 of the Delaware Code by striking therefrom the phrase "Bulk transfers subject to the Article on Bulk Transfers. Section 6-102".

Section 3. Amend Subsection (4), Section 2-403 of Title 6 of the Delaware Code by striking therefrom the phrase "Bulk Transfers (Article 6)".

Section 4. Rights and obligations that arose under Article 6 and Section 9-111 of Title 6 of the Delaware Code before their repeal remain valid and may be enforced as though those statutes had not been repealed.

Section 5. Amend §2725 of Title 6 of the Delaware Code by deleting subsection (b) of said section in its entirety.

Approved July 3, 1996

## CHAPTER 440

## FORMERLY

SENATE BILL NO. 399  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND AN ACT BEING CHAPTER 196, VOLUME 22, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO AUTHORIZE THE COMMISSIONERS OF LEWES TO APPOINT A BOARD OF PUBLIC WORKS FOR THE TOWN OF LEWES, WHICH SHALL ESTABLISH, CONTROL AND REGULATE AN ELECTRIC LIGHT PLANT, WATER WORKS AND A SEWER SYSTEM FOR SAID TOWN; PRESCRIBING THE POWERS AND DUTIES OF SAID BOARD AND PROVIDING FOR THE ELECTION OF THEIR SUCCESSORS" TO CHANGE THE DATE FOR FILING NOTICE OF CANDIDACY FOR OFFICE OF MEMBER OF BOARD OF PUBLIC WORKS AND TO REQUIRE UNITED STATES AND DELAWARE CITIZENSHIP TO VOTE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Section 1, Chapter 196, Volume 22, Laws of Delaware, as amended, by Section 1, Chapter 170, Volume 36, Laws of Delaware, as amended, be and the same is hereby further amended by striking out the following sentence:

"No person shall be voted upon as a candidate for the office of a member of the Board of Public Works unless at least one week before the date set for said election he, or some freeholder for him, shall have filed with the Secretary of the Town Commissioners of Lewes, a letter or certificate endorsed by at least five substantial freeholders, setting forth his intentions to become a candidate for said office for the term relating to the same."

and substituting in lieu thereof the following sentence:

"No person shall be voted upon as a candidate for the office of a member of the Board of Public Works unless at least by the first Friday in February, he, or some freeholder for him, shall have filed with the City Manager of Lewes, a letter or certificate endorsed by at least five substantial freeholders, setting forth his intentions to become a candidate for said office for the term relating to the same."

Section 2. Section 1, Chapter 196, Volume 22, Laws of Delaware, as amended by Section 1, Chapter 218, Volume 51, Laws of Delaware, as amended by Section 5, Chapter 281, Volume 55, Laws of Delaware, as amended by Section 5, Chapter 126, Volume 60, be and the same is hereby further amended by adding the words "and who shall be a citizen of the United States" after the phrase "... who shall have attained the age of eighteen (18) years on the date of said Annual Election for members of the Board of Public Works".

Approved July 3, 1996

CHAPTER 441

FORMERLY

SENATE BILL NO. 410

AN ACT TO AMEND VOLUME 27, CHAPTER 216, LAWS OF DELAWARE AS AMENDED, TO CHANGE RESIDENCY REQUIREMENTS AND ALLOW A SUBSTITUTE DATE FOR MUNICIPAL ELECTIONS IN THE CITY OF NEW CASTLE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Volume 27, Chapter 216, Laws of Delaware as amended, by inserting between "April" and "in" as they appear in Section 4 thereof the following:

"(except when such date falls on Easter Week-end, then on the third Saturday of April)".

Section 2. Amend Volume 27, Chapter 216, Laws of Delaware as amended by striking "one (1) year" as it appears in the 8th paragraph of Section 5 thereof and by inserting in lieu thereof "thirty (30) days".

Approved July 3, 1996

CHAPTER 442

FORMERLY

SENATE BILL NO. 431

AN ACT TO AMEND AN ACT, BEING CHAPTER 276, VOLUME 65, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF GEORGETOWN" TO INCREASE THE TOWN COUNSEL'S POWER TO LEVY AND COLLECT TAXES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 276, Volume 65, Laws of Delaware Section 30, Paragraph 30 by striking the phrase "Five Hundred Thousand Dollars (\$500,000) and substituting in lieu thereof the phrase "Two Million Dollars (\$2,000,000)."

Approved July 3, 1996

## CHAPTER 443

## FORMERLY

SENATE BILL NO. 432  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND THE CHARTER OF THE TOWN OF MILLSBORO, CHAPTER 457, VOLUME 60, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF MILLSBORO", TO CHANGE FROM TOWN CLERK TO TOWN MANAGER, CHANGE THE HOURS OF MUNICIPAL ELECTIONS, PROVIDE FOR ABSENTEE BALLOTING, AUTHORIZE THE MAYOR TO ACT IN CERTAIN EMERGENCIES, EXPAND THE POWERS OF THE MUNICIPALITY IN THE COLLECTION OF TAXES, INCREASE THE MAXIMUM FINE WHICH MAY BE IMPOSED, AND AUTHORIZE CONTRIBUTION TO AN AMBULANCE/EMERGENCY TREATMENT SERVICE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Subsection a, Section 7, Nominations For Town Councilmen, of Chapter 457, Volume 60, be amended by striking out the word "Clerk" as it appears and substitute in lieu thereof the word "Manager."

Section 2. Subsection b, Section 7, Nominations For Town Councilmen, of Chapter 457, Volume 60, be amended by striking out the word "Secretary of Town Council" as it appears and substitute in lieu thereof the word "Town Manager."

Section 3. Subsection c, Section 7, Nominations For Town Councilmen, of Chapter 457, Volume 60, be amended by striking out the word "Clerk" as it appears and substitute in lieu thereof the word "Manager."

Section 4. Subsection c, Section 9, Organization and Annual Meeting of Council, of Chapter 457, Volume 60, be amended by striking out the word "Clerk" as it appears and substitute in lieu thereof the word "Manager."

Section 5. Section 20, Town Clerk, of Chapter 457, Volume 60, be amended by striking all of said Section 20 and substituting in lieu thereof a new Section 20 to read as follows:

"Section 20. Town Manager.

(a) The Town Council of the Town of Millsboro may appoint a Town Manager who shall be the Chief Administrative Officer of the Town.

(b) The Town Council of the Town of Millsboro shall impose such qualifications for Town Manager as may be deemed necessary; provided, however, that no person holding the office of Town Councilman shall be chosen to be Town Manager during his or her term of office as Councilman.

(c) The Town Manager shall hold office for an indefinite term and may be removed by a majority vote of the Town Council of the Town of Millsboro. At least thirty (30) days before such removal shall become effective, the Town Council shall, by a majority vote of all the elected members thereof, adopt a preliminary resolution stating the reasons for his or her removal. The Manager may reply in writing and may request a public hearing which shall be held not earlier than twenty (20) days but not later than thirty (30) days after the filing of such request. After such public hearing, if one be requested, and after full consideration, the Town Council, by a majority vote of all the elected members thereof, may adopt a final resolution of removal. By the preliminary resolution, the Town Council may suspend the Town Manager from duty but shall

in any case call to be paid him or her forthwith any unpaid balance of his or her salary and his or her salary for the next three calendar months following the adoption of the preliminary resolution.

(d) In case of the absence or disability of the Town Manager, the Town Council may designate some qualified person who may be an elected or appointed official of the Town of Millsboro to perform the duties of such office during his absence or disability. The compensation which the Town Manager shall receive for the performance of his or her duties shall be fixed by the Town Council of the Town of Millsboro.

(e) The Town Manager shall be responsible to the Town Council of Millsboro for the proper administration of the affairs of the Town placed in his or her charge and to that end, he or she shall have the power to make such appointments and to hire such employees at such compensations as the Town Council, by Resolution, shall determine, subject to such rules and regulations as may be adopted by the Town Council. All employees shall be hired for an indefinite term and may be removed by the Town Manager at any time unless otherwise provided by resolution of Council. He or she shall exercise his or her sole discretion in the appointment or hiring of any such employees. The Town Manager shall be the sole judge of the competence or incompetence of any such person so appointed or hired by him. The Town Council of the Town of Millsboro shall sit as a Board of Appeal for the protection of Town employees at those times when the majority of all the Commissioners are agreed that a review of the action of the Town Manager would be in the best interests of the Town of Millsboro. The decision of the Town Council in such case shall be final and conclusive.

(f) It is the intention of this Charter that, in the performance of his or her duties, and in the exercise of his or her powers, the Town Manager shall not be influenced by any matters whatsoever of a political or fractional nature. It is the intention of this Charter that the Town Manager shall be guided solely by matters of expediency and efficiency in the administration of the affairs of the Town placed in his or her charge. Except for purposes of inquiry, the Town Council shall deal with that portion of the administrative service for which the Town Manager is responsible solely through the Town Manager.

(g) It shall be the duty of the Town Manager to supervise the administration of the affairs of the Town under his or her charge and to make such reports to the Town Council as are required by the Town Council. He or she shall make such recommendations to the Town Council concerning the affairs of the Town as may seem to him or her desirable. He or she shall keep the Town Council advised of the financial condition and future needs of the Town. He or she shall prepare and submit to the Town Council at the regular monthly meeting of each and every month a true, accurate and detailed account of all the moneys collected or received by him or her in the performance of his or her duties and shall promptly turn the same over to the Town Council.

(h) In conjunction with the Mayor and the Town Council of Millsboro, he or she shall sign warrants pursuant to appropriations or resolutions theretofore made for the Town Council. He or she shall prepare and submit to the Town Council such reports as may be required by the Town Council. He or she shall perform such other duties as may be prescribed by this Charter or required of him or her by Ordinance or Resolution of the Town Council.

(i) The Town Manager and such other officers of the Town as may be designated by vote of the Town Council shall be entitled to seats in the meetings of the Town Council, but shall not vote therein.

(j) The Town Manager shall have charge and supervision of the streets, gutters, curbs, sidewalks, boardwalks, jetties, piers, parks, and other

administrative affairs of the Town and all work relating thereto. He or she shall have charge of and shall collect all taxes, assessments, rentals, license fees, or other charges due the Town. He or she shall have charge of the administration of all provisions of this Charter and Ordinances and Resolutions of the Town Council relating to the affairs of the Town when not otherwise provided for by this Charter or by any Ordinance or Resolution of the Town Council. He or she shall pay over to the Town Treasurer at least monthly, as hereinbefore provided, and oftener is required by the Town Council, all moneys received or collected by him or her and by any employee under his or her supervision.

(k) He or she shall keep a full and strict account of all moneys received and all disbursements made by him or her and such accounts shall, at all times, be open to inspection to the Town Council.

(l) He or she shall give to the Town of Millsboro a bond, if required by the Town Council, in such sum and in form with security satisfactory to the Town Council for the faithful performance of the duties of his or her office and the restoration to The Town of Millsboro, in case of his or her death, resignation, or removal from office all books, papers, vouchers, money and other property of whatever kind in his or her possession belonging to the Town.

(m) In the event of a vacancy in the office of the Town Manager for any reason or reasons whatsoever, the duly appointed and qualified successor to that office shall succeed to all the rights, privileges and powers theretofore reposed in his or her predecessor or predecessors in office in the same manner as though all acts, deeds and steps theretofore taken by any such predecessor or predecessors with respect to any matter or thing pertaining to said office had been taken or performed by the successor to such office.

(n) Upon the death, resignation, or removal from office of the Town Manager, the Town Council shall appoint some suitable person, who may be an elected or appointed official of the Town of Millsboro, to perform the duties of Town Manager; provided, however, such person shall not serve for a period exceeding ninety (90) days from the date of his or her appointment."

Section 6. Section 27, Levy of Annual Taxes, of Chapter 457, Volume 60, be amended by striking out the words "Town Clerk" as they appear in said Section and substituting in lieu thereof the words "Town Manager."

Section 7. Section 28, Collection of Annual Taxes, of Chapter 457, Volume 60, be amended by striking out the words "Town Clerk" as they appear in said Section and substituting in lieu thereof the words "Town Manager."

Section 8. Subsection b, Section 29, Town Budget, of Chapter 457, Volume 60, be amended by striking out the word "Treasurer" as it appears in said Subsection and substituting in lieu thereof the words "Town Manager."

Section 9. Section 31, Streets, of Chapter 457, Volume 60, be amended by striking out the word "Treasurer" as it appears in said Section and substituting in lieu thereof the words "Town Manager."

Section 10. Subsection a, Section 32, Curbing and Paving, of Chapter 457, Volume 60, be amended by striking out the words "Town Clerk" as they appear in said Subsection and substituting in lieu thereof the words "Town Manager."

Section 11. Subsection b, Section 33, Collection of Charges Due The Town, of Chapter 457, Volume 60, be amended by striking out the words "Town Clerk" as they appear in said Section and substituting in lieu thereof the words "Town Manager."

Section 12. Subsection a, Section 8, Manner of Holding Annual Municipal Elections, of Chapter 457, Volume 60, be amended by striking out the words "six o'clock" as they appear in said Subsection and substituting in lieu thereof the words "seven o'clock."

Section 13. Subsection i, Section 8, Manner of Holding Annual Municipal Elections, of Chapter 457, Volume 60, be amended by striking out all of said Subsection and substituting in lieu thereof the following:

"(i) The Town Council may, by ordinance, provide for any qualified voter to cast an absentee ballot if such person is unable to appear and cast his or her ballot."

Section 14. Subsection a, Section 16, Duties of the Mayor and President of Council, of Chapter 457, Volume 60, be amended by adding to the end thereof the following:

"The Mayor shall be empowered to act on behalf of the Town, without prior Town Council approval, in the event of a sudden emergency requiring prompt action, in order to protect the public health, safety and welfare of the Town, its inhabitants and property owners. A "sudden emergency", for purposes of this section, shall include, by way of example and not limitation, a major fire or conflagration, significant flooding or serious storm threatening significant damage, a civic disturbance or a toxic spill. A sudden emergency shall also include any emergency situation as declared by any county, state or federal agency having jurisdiction over the Town where the scope of the emergency so declared includes the Town."

Section 15. Section 28, Collection of Annual Taxes, of Chapter 457, Volume 60, be amended by adding a new Subsection (i) to the end thereof to read as follows:

"(i) In addition to all of the remedies, methods and authorities for the collection of taxes, the Tax Collector shall have the same rights in the collection of taxes as the Tax Collector or Receiver of Taxes as Sussex County now has by law or may hereafter have, including the monition method for the collection of such taxes."

Section 16. Subsection (27), Subsection a, Section 30, Enumeration of Powers, of Chapter 457, Volume 60, be amended by striking the words "Five Hundred Dollars (\$500.00) as they appear and substituting in lieu thereof the words "One Thousand Dollars (\$1,000.00)."

Section 17. Subsection a, Section 30, Enumeration of Powers, of Chapter 457, Volume 60, be amended by adding a new Subsection (46) to read as follows:

"(46) To provide for the organization of an ambulance service and/or emergency treatment service and the control and government thereof: and at the discretion of the Town Council, to contribute, donate or give an amount or amounts not to exceed in the total during any fiscal year three percentum (3%) of the total taxes levied on real estate unto any volunteer ambulance or emergency treatment service company or companies incorporated under the laws of the State of Delaware, or any volunteer ambulance association or associations maintaining and operating ambulance, emergency treatment equipment and service to the Town; provided that any such contribution, donation or gift may be made subject to such conditions and stipulations as to the sum thereof as the Town Council shall deem advisable;"

Section 18. Subsection a(6), Section 34, Power To Borrow Money And Issue Bonds, by striking the phrase "from 12:00 noon prevailing time, until 6:00 in the evening prevailing time" and substituting in lieu thereof the phrase "from 1:00 in the afternoon prevailing time until 7:00 in the evening prevailing time."

Approved July 3, 1996

## CHAPTER 444

## FORMERLY

HOUSE BILL NO. 207  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 2AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO VICTIM-  
OFFENDER MEDIATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Title 11 of the Delaware Code by appending thereto a new chapter to  
read:

## "PART VIII

## SPECIAL PROGRAMS

## CHAPTER 95. VICTIM-OFFENDER MEDIATION

§ 9501. Purpose.

(a) The General Assembly finds and declares that:

(1) the resolution of felony, misdemeanor and juvenile delinquent  
disputes can be costly and complex in a judicial setting where the parties involved  
are necessarily in an adversary posture and subject to formalized procedures; and

(2) victim-offender mediation programs can meet the needs of Delaware's  
citizens by providing forums in which persons may voluntarily participate in the  
resolution of certain criminal offenses in an informal and less adversarial  
atmosphere.

(b) It is the intent of the General Assembly that each program established  
pursuant to this Chapter:

(1) stimulate the establishment and use of victim-offender mediation  
programs to help meet the need for alternatives to the courts for the resolution of  
certain criminal offenses, whether before or after adjudication;

(2) encourage continuing community participation in the development,  
administration, and oversight of local victim-offender mediation programs;

(3) offer structures for victim-offender mediation which may serve as  
models for programs in other communities; and

(4) Serve a specific community or locale and resolve certain criminal  
offenses that arise within that community or locale.

§ 9502. Program funding; operation; supervision.

(a) There is hereby established a Victim-Offender Mediation Committee to be  
composed of the Attorney General, Public Defender, Chief Magistrate, Chair of the  
Criminal Justice Council, Director of the Administrative Office of the Courts and the  
Chief Judge of Family Court or their designees to administer this chapter. No funds shall  
be awarded or program approved without the approval of the Victim-Offender Mediation  
Committee.

(b) To be eligible for State funds a program must do the following:

(1) be operated by a 501(c)(3) organization in Delaware;

(2) provide neutral mediators who have received training in conflict resolution techniques;

(3) comply with this Chapter and the rules adopted by the Victim-Offender Mediation Committee;

(4) provide victim-offender mediation in felony, misdemeanor and juvenile delinquency cases without cost to the participants; and

(5) at the conclusion of the mediation process provide a written agreement or decision to the referral source setting forth the settlement of the issues and future responsibilities of each participant.

(c) Each program that receives funds under this Chapter must be operated under a contract with the Victim-Offender Mediation Committee and must comply with this Chapter.

(d) An organization applying to the Victim-Offender Mediation Committee for funding is to include the following information in its application:

(1) cost of operating the victim-offender mediation program, including the compensation of employees;

(2) description of the proposed area of service and number of participants expected to be served;

(3) proof of non-profit status; and

(4) charter of incorporation.

(e) The Chair of the Victim-Offender Mediation Committee or his or her designee may inspect, examine, and audit the fiscal affairs of victim-offender mediation programs.

(f) A program operated under this Chapter is not a state agency or an instrumentality of the State. Employees and volunteers of a program are not employees of the State.

(g) A program that receives funds from the Victim-Offender Mediation Committee under this Chapter must annually provide the Victim-Offender Mediation Committee with statistical data regarding the following:

(1) the operating budget;

(2) the number of case referrals, categories, or types of cases referred;

(3) the number of parties serviced;

(4) the number of cases resolved;

(5) the nature of the resolution, amount, and type of restitution to the victim and/or community;

(6) the rate of compliance;

(7) the length of total case processing time by the victim-offender mediation program;

(8) community service hours agreed to, if applicable; and

(9) community service hours completed, if applicable.

The data shall maintain the confidentiality and anonymity of all mediation participants.

(h) This Act shall not be implemented unless and until there is a General Fund, federal, and/or a private appropriation sufficient to cover the operational expenses of the victim-offender mediation program.

§ 9503. Confidentiality.

All memoranda, work notes or products, or case files or programs established under this Act are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless the court or administrative tribunal determines that the materials were submitted by a participant to the program for the purpose of avoiding discovery of the material in a subsequent proceeding. Any communication relating to the subject matter of the resolution made during the mediation process by any participant, mediator, or any other person is a privileged communication and is not subject to disclosure in any judicial or administrative proceeding unless all parties to the communication waive the privilege. The foregoing privilege and limitation of evidentiary use does not apply to any communication of a threat that injury or damage may be inflicted on any person or on the property of a party to the dispute, to the extent the communication may be relevant evidence in a criminal matter. Nothing in this Section shall prevent the Victim-Offender Mediation Committee from obtaining access to any information it deems necessary to administer this Chapter.

§ 9504. Eligibility.

No offender shall be admitted to the program unless the Attorney General certifies that the offender is appropriate to the program, regardless of any criteria established under any program or this Chapter.

Any person who voluntarily enters a mediation process at a victim-offender mediation program established under this Chapter may revoke his or her consent, withdraw from mediation, and seek judicial or administrative redress prior to reaching a written agreement. No legal penalty, sanction, or restraint may be imposed upon the person of such withdrawal.

§ 9505. Immunity.

(a) Members of the Victim-Offender Mediation Committee, board of directors of an organization with a victim-offender mediation program are immune from suit in any civil action based upon any proceedings or other official acts performed in good faith as members of the board.

(b) State employees and employees and volunteers of a victim-offender mediation program are immune from suit in any civil action based on any proceedings or other official act performed in their capacity as employees or volunteers, except in cases of willful or wanton misconduct.

(c) A victim-offender mediation program is immune from suit in any civil action based on any of its proceedings or other official acts performed by its employees, volunteers, or members of its board of directors, except (a) in cases of willful or wanton misconduct by its employees or volunteers, and (b) in cases of official acts performed in bad faith by members of its board."

Approved July 3, 1996

CHAPTER 445

FORMERLY

HOUSE BILL NO. 295  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO FAMILY COURT AND JUVENILES DRIVING WITHOUT LICENSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1009, Title 10 of the Delaware Code, by inserting a new subsection and redesignating the subsequent existing subsections, which new subsection shall read:

"(g) A child who is adjudicated delinquent on charges which would constitute a violation of 21 Del. C., § 2701 if the child were charged as an adult shall be prohibited from receiving a temporary instruction permit or an operator's license until the later of the child's seventeenth birthday or one year from the date of adjudication."

Approved July 3, 1996

The data shall maintain the confidentiality and anonymity of all mediation participants.

(h) This Act shall not be implemented unless and until there is a General Fund, federal, and/or a private appropriation sufficient to cover the operational expenses of the victim-offender mediation program.

§ 9503. Confidentiality.

All memoranda, work notes or products, or case files or programs established under this Act are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless the court or administrative tribunal determines that the materials were submitted by a participant to the program for the purpose of avoiding discovery of the material in a subsequent proceeding. Any communication relating to the subject matter of the resolution made during the mediation process by any participant, mediator, or any other person is a privileged communication and is not subject to disclosure in any judicial or administrative proceeding unless all parties to the communication waive the privilege. The foregoing privilege and limitation of evidentiary use does not apply to any communication of a threat that injury or damage may be inflicted on any person or on the property of a party to the dispute, to the extent the communication may be relevant evidence in a criminal matter. Nothing in this Section shall prevent the Victim-Offender Mediation Committee from obtaining access to any information it deems necessary to administer this Chapter.

§ 9504. Eligibility.

No offender shall be admitted to the program unless the Attorney General certifies that the offender is appropriate to the program, regardless of any criteria established under any program or this Chapter.

Any person who voluntarily enters a mediation process at a victim-offender mediation program established under this Chapter may revoke his or her consent, withdraw from mediation, and seek judicial or administrative redress prior to reaching a written agreement. No legal penalty, sanction, or restraint may be imposed upon the person of such withdrawal.

§ 9505. Immunity.

(a) Members of the Victim-Offender Mediation Committee, board of directors of an organization with a victim-offender mediation program are immune from suit in any civil action based upon any proceedings or other official acts performed in good faith as members of the board.

(b) State employees and employees and volunteers of a victim-offender mediation program are immune from suit in any civil action based on any proceedings or other official act performed in their capacity as employees or volunteers, except in cases of willful or wanton misconduct.

(c) A victim-offender mediation program is immune from suit in any civil action based on any of its proceedings or other official acts performed by its employees, volunteers, or members of its board of directors, except (a) in cases of willful or wanton misconduct by its employees or volunteers, and (b) in cases of official acts performed in bad faith by members of its board."

Approved July 3, 1996

CHAPTER 445

FORMERLY

HOUSE BILI. NO. 295  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO FAMILY COURT AND JUVENILES DRIVING WITHOUT LICENSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1009, Title 10 of the Delaware Code, by inserting a new subsection and redesignating the subsequent existing subsections, which new subsection shall read:

“(g) A child who is adjudicated delinquent on charges which would constitute a violation of 21 Del. C. § 2701 if the child were charged as an adult shall be prohibited from receiving a temporary instruction permit or an operator's license until the later of the child's seventeenth birthday or one year from the date of adjudication.”

Approved July 3, 1996

## CHAPTER 446

## FORMERLY

## HOUSE BILL NO. 640

AN ACT TO AMEND CHAPTER 93, TITLE 16, DELAWARE CODE, RELATING TO HEALTH PLANNING AND RESOURCES MANAGEMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Purpose.

Amend § 9301, Chapter 93, Title 16 of the Delaware Code by striking the current language and inserting in lieu thereof the following:

"It is the purpose of this chapter to provide a continuing rational framework for promoting cost-effective and efficient use of health care resources for a three year period until June 30, 1999 when all the provisions of this chapter will sunset."

Section 2. Amend § 9302(6), Chapter 93, Title 16 of the Delaware Code by striking "\$750,000" and substituting in lieu thereof, "\$1,500,000 increasing to \$3,000,000 effective January 1, 1998".

Section 3. Amend § 9304(2), Chapter 93, Title 16 of the Delaware Code by striking "\$750,000 wherever it appears and substituting in lieu thereof, "\$1,500,000 increasing to \$3,000,000 effective January 1, 1998".

Section 4. Amend § 9304(3), Chapter 93, Title 16 of the Delaware Code by striking the phrase "or decreases."

Section 5. Amend § 9304, Chapter 93, Title 16 of the Delaware Code by striking § 9304(4) in its entirety and designating § 9304(5) as § 9304(4).

Section 6. Amend § 9311, Chapter 93, Title 16 of the Delaware Code by striking in its entirety and substituting a new § 9311 as follows:

"§ 9311. Sunset Provision.

The Board and all provisions of this chapter shall sunset June 30, 1999."

Section 7. Severability.

If any clause, sentence, section, provision or part of this Act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, invalidate or affect the remainder of this Act which shall remain in full force and effect.

Section 8. Effective Date.

This act shall be effective on July 1, 1996, or, if later, the date of enactment.

Approved July 3, 1996

CHAPTER 447

FORMERLY

SENATE BILL NO. 298

AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, SECTION 29 OF THE DELAWARE CONSTITUTION OF 1897, AS AMENDED, RELATING TO THE TERM OF OFFICE OF JUSTICES OF THE PEACE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Article IV, Section 29 of the Delaware Constitution of 1897, as amended, by deleting the Section 29 in its entirety and substituting in lieu thereof:

"Section 29. There shall be appointed, as hereinafter provided, such number of persons to the Office of the Justice of the Peace as directed by law, who shall be commissioned as follows:

(a) upon first appointment and confirmation, a Justice of the Peace shall be commissioned for four (4) years:

(b) upon second and subsequent appointments and confirmation, a Justice of the Peace shall be commissioned for six (6) years."

Passed June 19, 1996

## CHAPTER 448

## FORMERLY

SENATE BILL NO. 317  
AS AMENDED BY SENATE AMENDMENT NO. 2AN ACT TO AMEND TITLES 10, 11 AND 13 OF THE DELAWARE CODE RELATING TO  
CRIMINAL NON-SUPPORT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Chapter 5, Title 11 of the Delaware Code by adding the following new §1113;

"Section 1113. Criminal Non-support and Aggravated Criminal Non-support.

(a) A person is guilty of criminal non-support when he or she knowingly fails, refuses or neglects to provide the minimal requirements of food, clothing or shelter for his or her minor child. Criminal non-support is a class B misdemeanor unless the person has previously been convicted of the same offense or the offense of aggravated criminal non-support, in which case it is a class A misdemeanor.

(b) A person is guilty of aggravated criminal non-support when, being subject to a support order, he or she is delinquent in meeting, as and when due, the full obligation established by such support order and has been so delinquent for a period of at least four (4) months' duration. Aggravated criminal non-support is a class A misdemeanor, unless any one of the following aggravating factors is present, in which case aggravated criminal non-support is a class G felony:

(1) The person has previously been convicted of aggravated criminal non-support; or

(2) The person has been delinquent in meeting, as and when due, the full obligation established by such support order for eight (8) consecutive months; or

(3) The arrearage is \$10,000.00 or more.

(c) In any prosecution for criminal non-support, it is an affirmative defense that the accused has fully complied with a support order that was in effect for the support of the subject person during the time period of the offense charged.

(d) In any prosecution for criminal non-support or aggravated criminal non-support, it is an affirmative defense that the accused was unable to pay or provide support, but the accused's inability to pay or provide support must be the result of circumstances over which he or she had no control. Unemployment or underemployment with justifiable excuse shall constitute a defense to any prosecution for criminal non-support or aggravated criminal non-support. Justifiable excuse may be established where the accused has been involuntarily terminated from his or her employment or otherwise had his or her income involuntarily reduced, and is diligently and in good faith seeking reasonably appropriate employment opportunities under all the circumstances or pursuing self-employment.

(e) It is not a defense to a charge of criminal non-support or aggravated criminal non-support that the person to be supported received support from a source other than the accused.

(f) In any prosecution for criminal non-support or aggravated criminal non-support, payment records maintained by an administrative agency or court through which a support order is payable are prima facie evidence of the support paid or unpaid and the accrued arrearages.

(g) A privilege against disclosure of confidential communications between spouses does not apply to a prosecution for criminal non-support or aggravated criminal non-support, and either spouse shall be competent to testify against the other as to any and all relevant matters.

(h) No civil proceeding in any court or administrative agency shall be a bar to a prosecution for criminal non-support or aggravated criminal non-support.

(i) The court, in its discretion, may order that any fine upon conviction for criminal non-support or aggravated criminal non-support be paid for the support of the person entitled to support. If a support order has been entered, a fine paid pursuant to this subsection shall be applied in accordance with the support order.

(j) The court shall order any person convicted of criminal non-support or aggravated criminal non-support to make restitution to the person entitled to support. The amount of restitution is the arrearages that accrued under a support order during the time period for which the person was convicted of criminal non-support or aggravated criminal non-support, or, if there is no support order, an amount determined to be reasonable by the court.

(k) As used in this Section:

(1) 'Child' means any child, whether over or under the age of majority, with respect to whom a support order exists.

(2) 'Minor child' means any child, natural or adopted, whether born in or out of wedlock, under 18 years of age, or over 18 years of age but not yet 19 years of age if such child is a student in high school and is likely to graduate.

(3) 'Support order' means a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse or a parent, issued by a court or agency, which provides for monetary support, medical support, health care, arrearages or reimbursement, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection or otherwise."

Section 2. Amend Chapter 5, Title 13 of the Delaware Code by striking Subchapter III, §§521, 522, 523 and 524 thereof, in their entirety.

Section 3. Amend §922(a)(4), Chapter 9, Title 10 of the Delaware Code by striking said paragraph in its entirety and by substituting in lieu thereof the following:

"(4) Misdemeanor criminal non-support and misdemeanor aggravated criminal non-support under 11 Del. C. Sec. 1113."

Approved July 5, 1996

## CHAPTER 449

## FORMERLY

## SENATE BILL NO. 318

## AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO BOND FORFEITURE IN CHILD SUPPORT PROCEEDINGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §925(7), Chapter 9, Title 10 of the Delaware Code by striking the semi-colon (“;”) at the end of said paragraph and by substituting in lieu thereof the following:

“, provided, however, that the proceeds of any bond forfeited for a party’s failure to appear in any civil or criminal child support proceeding shall be paid over to the payee of the child support order and applied to the child support account;”.

Section 2. Amend §7501, Chapter 75, Title 10 of the Delaware Code by adding at the end of said section the following:

“The proceeds of any bond forfeited for a party’s failure to appear in any civil or criminal child support proceeding shall be paid over to the payee of the child support order and applied to the child support account.”

Section 3. Amend §2115, Chapter 21, Title 11 of the Delaware Code by adding a new subsection (c) to said section to read as follows:

“(c) The proceeds of any bond forfeited for the accused’s failure to appear in any child support proceeding shall be paid over to the payee of the child support order and applied to the child support account.”

Approved July 5, 1996

## CHAPTER 450

## FORMERLY

SENATE BILL NO. 413  
AS AMENDED BY SENATE AMENDMENT NO. 1AN ACT TO AMEND CHAPTER 25, TITLE 6 OF THE DELAWARE CODE RELATING TO  
PROHIBITED TRADE PRACTICES

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Chapter 25, Title 6 of the Delaware Code by adding thereto a new subchapter, designated as Subchapter IX, which new subchapter shall read as follows:

"Subchapter IX. Home Food Service Plan Sales

§2590. Short Title.

This subchapter may be cited as the 'Delaware Home Food Service Plan Sales Act.'

§2591. Purpose

The purpose of this Act is to safeguard the public against deceit and misrepresentation and to ensure, foster and encourage truthful practices and disclosure in Home Food Service Plan Sales.

§2592. Definitions

As used in this subchapter, the following definitions shall apply:

(a) 'Home food service plan' means a plan of food items or food items in combination with non-food items and/or service offered by the seller for profit and for sale in the consumer's home, whether or not a membership fee or similar charge is involved. Sales of immediately consumable food items, 'Meals on Wheels' or similar programs, 'fund-raising efforts' and meals prepared in the consumer's home by another are not within the definition of a 'Home food service plan.'

(b) 'Seller' means any person, partnership, corporation or association, however organized, engaged in the sale of a home food service plan.

(c) 'Buyer' means both the actual and prospective purchaser of a home food service plan, but does not include persons purchasing for resale.

(d) 'Contract' means all of the collective written or oral agreements between a seller and a buyer relating to the purchase of a home food service plan, except promissory notes or other financing agreements.

(e) 'Food Item' means each edible product sold as part of a home food service plan, including, but not limited to, each constituent part or kind of meat cut from a primal source, each kind of whole poultry or poultry part, seafood products, and other like products.

(f) 'non-food item' means each inedible product sold as part of a home food service plan, including, but not limited to, paper products, health and beauty products, detergents, cleaners and disinfectants, rolls of wrapping, and like products. The term does not include food items and durable consumer goods such as appliances.

(g) 'Item Price' means the price of a food or non-food item sold as part of a home food service plan, computed to the nearest tenth of 1 cent when less than 1 dollar, and to the nearest cent when 1 dollar or more. The item price, exclusive of any service charge(s), shall be expressed in terms of the price per unit of weight, measure, or count set forth in 'Uniform Unit

Pricing Regulation' in the current edition of National Institute of Standards and Technology Handbook 130.

(h) 'Service charge' means the total price for any additional features, services, and processing associated with the purchase of a home food service plan, whether stated in terms of membership fees or otherwise.

(i) 'Primal source' means the following cuts:

(1) for beef, the primal sources are the round, flank, loin, rib, plate, brisket, chuck, and shank;

(2) for veal and lamb or mutton, the primal sources are the leg, flank, loin, rack (rib), and shoulder; and

(3) for pork, the primal sources are the belly, loin, ham, spareribs, shoulder, and jowl.

#### §2593. Contract and Disclosure Requirements.

(a) At the time of sale, the seller shall provide the buyer with a written document referred to in this section as the 'written agreement,' which shall clearly and conspicuously disclose all of the following:

(1) The name, address, and telephone number of the Seller and the name and address of the Buyer;

(2) The date of the contract;

(3) The price of the food and non-food items included in the home food service plan;

(4) The Service charge or the price of any service charges associated with the home food service plan;

(5) The total price of the home food service plan, including the price of the food and non-food items, and the price of any service charge(s); and

(6) A statement that the Buyer shall have the right to cancel the home food service plan contract until midnight of the third business day after the date on which the Buyer executes the contract or until midnight of the third business day after the day on which the Buyer takes first delivery or until midnight of the third business day after the day on which the Seller provides the Buyer with the fully executed copy of the contract, whichever is later, by giving written notice of cancellation to the Seller. Compliance with requirements of Chapter 44 of Title 6 governing the form of notice of right of cancellation in Home Solicitation Sales shall be deemed satisfactory notice of the requirements of this regulation.

(b) In addition to the above disclosures required in the written agreement, all of the following disclosures are required to be given to the Buyer at the time of sale:

(1) A written list of all food and non-food items to be sold, which shall include:

(i) The identity of each item and, where applicable, the United States Department of Agriculture quality grade of the item, if so graded; the primal source; and the brand or trade name;

(ii) The quantity of each item sold;

(iii) The estimated serving size by net weight of each piece of meat, poultry, and seafood item offered for sale under the home food service plan, provided, however, that such estimates shall not differ from the actual weight at the time of delivery by more than

5 percent, and that the dollar value of the meat, poultry, and seafood items delivered is equal to or greater than that represented to the Buyer; and

(iv) The net weight, measure, or count of all other food and non-food items offered for sale;

(2) A current item price list stating in dollars and cents the price per kilogram or pound or other appropriate unit of measure, and the total sale price, of each item to be delivered. This price list shall clearly and conspicuously identify whether there are additional costs disclosed in the written agreement relating to any 'service charges' associated with the purchase of the home food service plan; and,

(3) If a membership is sold, a written statement of all terms, conditions, benefits, and privileges applicable to the membership.

(4) If a service charge is included, a written statement specifically identifying the service(s) provided and the price(s) charged for them.

(c) At the time of delivery, the Seller shall provide a receipt, for signature by the Buyer, disclosing all of the following information:

(1) The identity of each food and non-food item, and the net quantity of the contents in terms of either weight, measure, or count, as required by applicable law. The net weight of each food item delivered shall be within the limit specified in §2593(b)(1)(iii); and

(2) The item price and total sales price of each food and non-food item. The item price shall be the same as that specified on the item price list given to the Buyer at the time of sale.

#### §2594. Advertisement of Home Food Service Plans.

Any advertisement of a home food service plan which discloses item pricing information in accordance with the provisions of this subchapter shall set forth in a clear and conspicuous manner whether there are any service charges or other additional costs associated with the purchase of the home food service plan.

#### §2595. Enforcement and Remedies.

(a) The Attorney General shall have the same authority to enforce and carry out the provisions of this subchapter as is granted by §2517 of Title 29 and by §§2511-2527 and §§2531-2536 of Title 6.

(b) If a court or tribunal of competent jurisdiction finds that any person has willfully violated this subchapter, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all costs, a civil penalty of not more than ten thousand dollars per violation pursuant to §2513(c) of Title 6. If the violation is against an elderly or disabled person an additional civil penalty of not more than ten thousand dollars per violation shall be recovered pursuant to §2581 of Title 6. Each day that a willful violation continues shall be considered a separate violation.

(c) For the purpose of this subchapter, a willful violation occurs when the party committing the violation knew or should have known that the party's conduct was of the nature prohibited by this subchapter.

(d) The remedies provided for in this subchapter are not exclusive, and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provision of law."

Approved July 5, 1996

## CHAPTER 451

## FORMERLY

## SENATE BILL NO. 424

AN ACT TO AMEND CHAPTER 5, TITLE 11 OF THE DELAWARE CODE RELATING TO OFFENSES INVOLVING CHILDREN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 1102, Title 11 of the Delaware Code by redesignating the existing language thereof as subsection "(a)" and be deleting the last sentence thereof in its entirety.

Section 2. Amend Section 1102, Title 11 of the Delaware Code by adding new subsections "(b)" and "(c)" to read as follows:

"(b) Endangering the welfare of a child shall be punished as follows:

(1) When the death of a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class E felony;

(2) When serious physical injury to a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(3) In all other cases, endangering the welfare of a child is a class A misdemeanor.

(c) For the purpose of imposing the penalties prescribed in paragraph (b) (1) or (b) (2) of this section, it is not necessary to prove the person's state of mind or liability for causation with regard to the resulting death or serious physical injury of the child, notwithstanding the provisions of §§ 251, 252, 261, 262, 263 or 264 of this title, or any other statutes to the contrary."

Section 3. Amend Section 1104, Title 11 of the Delaware Code by adding between the words "child" and "based" as they appear for the first time in the section the following phrase: ", except where it is alleged to be punishable under subsections 1102(b)(1) or (b)(2) of this title, which is".

Approved July 5, 1996

## CHAPTER 452

## FORMERLY

HOUSE BILL NO. 496  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 & 2AN ACT TO AMEND TITLES 13, 29, 21, 18 AND 30 OF THE DELAWARE CODE,  
RELATING TO CHILD SUPPORT OBLIGATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend subchapter II, Chapter 5, Title 13 of the Delaware Code by adding a new § 520 to read as follows:

"§ 520. Drivers', professional, occupational and business licenses.

(a) As used in this Section and in § 516(g) of this Title, the term 'license' means a commercial driver license or license to operate a motor vehicle issued or renewed under Chapter 26 or 27 of Title 21; and a license, permit, certificate, approval, registration or other similar form of permission or authorization to practice or engage in any profession, occupation or business, issued or renewed by the Division of Revenue under Chapter 23, 25, 27 or 29 of Title 30, or by any commission, board or agency under the authority of the Division of Professional Regulation which is named in § 8810 of Title 29 (but not including any license issued on behalf of a non-profit applicant by the Gaming Control Board as set forth in Chapter 15 of Title 28).

(b) In order to provide for the denial or suspension of licenses to delinquent child support obligors, the Director of the Division of Motor Vehicles, the Director of the Division of Revenue, and the Director of the Division of Professional Regulation shall each enter into a cooperative agreement with the Director of the Division of Child Support Enforcement to make available or otherwise provide to the Director of the Division of Child Support Enforcement information regarding any person who applies for or holds a license issued or renewed by their respective Divisions. The specific information and the manner and frequency with which it is made available or otherwise provided to the Division of Child Support Enforcement shall be as determined by each cooperative agreement, but such information shall be made available or otherwise provided at least once each calendar year. Each cooperative agreement shall be revised as necessary to effectuate the provisions and purposes of this Section. From such information provided by the Division of Motor Vehicles, the Division of Revenue and the Division of Professional Regulation, the Division of Child Support Enforcement, at such intervals as it determines, may identify such applicants or licensees who are delinquent child support obligors as described in this Section, and undertake enforcement action pursuant to this Section.

(c) Subject to the notice and hearing provisions of this Section, the Director of the Division of Child Support Enforcement may give notice that a license shall not be issued or renewed by the Division of Motor Vehicles, the Division of Revenue or by any commission, board or agency under the authority of the Division of Professional Regulation which is named in § 8810 of Title 29 if:

(1) the applicant is the subject of an outstanding capias or bench warrant issued by the Family Court for failure to appear at any paternity or child support proceeding in a case enforced by the Division of Child Support Enforcement pursuant to Title IV-D of the Social Security Act (42 U.S. C. Sec. 651, et seq.); or

(2) the applicant is under an order of the Family Court to pay child support in a case enforced by the Division of Child Support Enforcement pursuant to Title IV-D of the Social Security Act (42 U.S.C. Sec. 651, et seq.), owes \$1,000.00 or more in arrears or retroactive support, and is 30 or more days delinquent in payment of the support order.

(d) Subject to the notice and hearing provisions of this Section, the Director of the Division of Child Support Enforcement may give notice that a license issued by the Division of Motor Vehicles, the Division of Revenue or by any commission, board or agency under the authority of the Division of Professional Regulation which is named in § 8810 of Title 29 shall be suspended if:

(1) the licensee is the subject of an outstanding *caipias* or bench warrant issued by the Family Court for failure to appear at any paternity or child support proceeding in a case enforced by the Division of Child Support Enforcement pursuant to Title IV-D of the Social Security Act (42 U.S.C. sec. 651, et seq.); or

(2) the licensee is under an order of the Family Court to pay child support in a case enforced by the Division of Child Support Enforcement pursuant to Title IV-D of the Social Security Act (42 U.S.C. Sec. 651, et seq.), owes \$1,000.00 or more in arrears or retroactive support, and is 30 or more days delinquent in payment of the support order.

(e) The Director of the Division of Child Support Enforcement shall give written notice of the proposed denial or suspension of a license to the obligor, together with the amount of arrears or retroactive support and the date of the last payment on the child support order. The denial or suspension of the license becomes effective upon final written notice to the obligor from the Director of the Division of Motor Vehicles, the Director of the Division of Revenue and/or the Director of the Division of Professional Regulation unless, within 20 days of the date the notice of proposed denial or suspension is mailed by the Director of the Division of Child Support Enforcement, the obligor:

(1) Requests in writing an administrative hearing before the Director of the Division of Child Support Enforcement or his or her designee;

(2) Pays the arrears or retroactive support in full;

(3) Surrenders to the Family Court on any outstanding *caipias* or bench warrant and pays any arrears or retroactive support in full; or

(4) Consents to a payment plan acceptable to the Director of the Division of Child Support Enforcement or his or her designee, and fully complies therewith.

(f) The Director of the Division of Child Support Enforcement or his or her designee shall convene a hearing within 30 days after receipt of the obligor's timely written request, and shall issue a written decision within 5 working days after the hearing. The only issues to be addressed at the hearing are whether the applicant or licensee is the obligor named in the child support order; whether the obligor owes \$1,000.00 or more in arrears or retroactive support; and whether the obligor is 30 or more days delinquent in payment of the child support order. No evidence of the appropriateness of the child support order or of the obligor's ability to comply shall be received or considered at the hearing. The records of the Division of Child Support Enforcement shall be presumptive of the amount of arrears or retroactive child support and of the obligor's payment history.

(g) If the obligor fails to timely request a hearing or to otherwise timely comply with the requirements of subsection (e) of this Section to avoid denial or suspension of the license, or upon the issuance of a written decision adverse to the obligor after a hearing, the Director of the Division of Child Support Enforcement may notify the Director of the Division of Motor Vehicles, the Director of the Division of Revenue and/or the Director of the Division of Professional Regulation that the provisions of this Section for denial or suspension of the obligor's license have been met. Such notification may be made electronically, by computer or by such other means as the Director of the Division of Child Support Enforcement and the Director of the Division of Motor Vehicles, the Director of the Division of Revenue and the Director of the Division of Professional Regulation may agree, and such notification shall constitute sufficient authority for the denial or suspension of any license. The Director of the Division of Motor Vehicles, the Director of the Division of Revenue and/or the Director of the Division of Professional Regulation shall forthwith deny the issuance or renewal of any license, or suspend the same, and so notify the applicant or licensee in writing. The notice from the Director of the Division of Child Support Enforcement shall be conclusive, and the action of the Director of the Division of Motor Vehicles, the Director of the Division of Revenue and/or the Director of the Division of Professional Regulation in compliance therewith shall be effective 4 days after the date notice of same is mailed to the obligor at the address on record at the Division of Motor Vehicles, the Division of Revenue, or the Division of Professional Regulation. The obligor shall remain ineligible for the issuance, renewal or reinstatement of any license until the obligor obtains from the Director of the Division of Child Support Enforcement or his or her designee written certification that the grounds for denial or suspension of a license under this Section no longer exist.

(h) Except as otherwise provided herein, all hearings and proceedings under this Section shall be in accordance with the provisions of the Administrative Procedures Act, Chapter 101 of Title 29.

(i) The obligor may appeal a decision entered after a hearing under this Section to the Family Court. The appeal shall be filed within 30 days of the day the notice of decision is mailed by the Director of the Division of Motor Vehicles, the Director of the Division of Revenue or the Director of the Division of Professional Regulation. The appeal shall be on the record to the Family Court and shall be as provided in §§ 10102(4) and 10142 through 10145 of Title 29.

(j) The process described in this Section shall constitute the sole remedy for contesting the denial or suspension of a license based on the grounds in this Section.

(k) The remedies provided in this Section shall be in addition to any other remedies for the enforcement of a support order.

(l) Nothing in this Section shall be construed as limiting the Family Court's authority to order the denial or suspension of any license as provided in § 516(g) of this Title. Failure of the Family Court to order denial or suspension of a license under § 516(g) of this Title shall not in any way limit or affect the authority to deny or suspend a license as provided in this Section.

(m) The Director of the Division of Child Support Enforcement may enter into such agreements with the Director of the Division of Motor Vehicles, the Director of the Division of Revenue, the Director of the Division of Professional Regulation and such other agencies as may be appropriate to effectuate the purposes of this Section."

Section 2. Amend § 516, Chapter 5, Title 13 of the Delaware Code by adding a new subsection (g) to read as follows:

"(g) Upon a finding by the Court that an obligor owes \$1,000.00 or more in arrears or retroactive support and is 30 or more days delinquent in payment of the child support order, in addition to any other orders, the Court may order the suspension of the obligor's license, as that term is defined in § 520 of this Title. Such an order shall also render the obligor ineligible for the issuance or renewal of any such license.

The Court shall notify the Director of the Division of Motor Vehicles, the Director of the Division of Revenue and/or the Director of the Division of Professional Regulation of the denial or suspension of a license pursuant to this subsection. Such notification may be made electronically, by computer or by such other means as the Court and the Director of the Division of Motor Vehicles, the Director of the Division of Revenue, and the Director of the Division of Professional Regulation may agree, and such notification shall constitute sufficient authority for the denial or suspension of any license.

The Director of the Division of Motor Vehicles, the Director of the Division of Revenue and/or the Director of the Division of Professional Regulation shall forthwith deny the issuance or renewal of any license, or suspend the same, and so notify the obligor. The order of the Court shall be conclusive, and the action of the Director of the Division of Motor Vehicles, the Director of the Division of Revenue and/or the Director of the Division of Professional Regulation in compliance therewith shall be effective 4 days after the date notice of same is mailed to the obligor at the address on record at the Division of Motor Vehicles, the Division of Revenue, or the Division of Professional Regulation.

The obligor shall remain ineligible for the issuance, renewal or reinstatement of any license until the obligor obtains from the Court written certification that the grounds for denial or suspension of a license under this subsection no longer exist. Nothing in this subsection shall be construed as limiting the denial or suspension of any license as provided in Section 520 of this Title."

Section 3. Amend § 2707(b), Chapter 27, Title 21 of the Delaware Code by adding a new paragraph (12) as follows:

"(12) Person who is the subject of an outstanding *capias* or bench warrant issued by the Family Court for failure to appear at any paternity or child support proceeding, or with respect to whom the Department has received notification from the Family Court as provided in § 516(g) of Title 13, or notice from the Director of the Division of Child Support Enforcement as provided in § 520 of Title 13 regarding the *denial* or suspension of a license because of such person's child support delinquency."

Section 4. Amend § 2717, Chapter 27, Title 21 of the Delaware Code by adding at the end of said section the following sentence: "An appeal of a denial of a license pursuant to § 516(g) or § 520 of Title 13 shall be only as provided in Title 13."

Section 5. Amend § 2732, Chapter 27, Title 21 of the Delaware Code by inserting the words "or suspension" between the words "revocation" and "of" in the caption of said section.

Section 6. Further amend § 2732, Chapter 27, Title 21 of the Delaware Code by redesignating current subsection "(d)" as subsection "(e)" and by adding a new subsection "(d)" to read as follows:

"(d) Upon receipt of notification from the Family Court pursuant to § 516(g) of Title 13, or notice from the Director of the Division of Child Support Enforcement pursuant to § 520 of Title 13 regarding the suspension of a license because of such person's child support delinquency, the Department shall forthwith suspend such person's commercial driver license or license to operate a motor vehicle. The provisions of § 516(g) and § 520 of Title 13 shall supersede any provisions of this Title to the contrary with respect to any matter relating to the denial or suspension of a license under § 516(g) or § 520 of Title 13. The Department shall create and maintain a record showing a suspended driving status

for a person whose license is suspended pursuant to this subsection. A license so suspended shall remain suspended until the person obtains written certification from the Family Court or the Director of the Division of Child Support Enforcement or his or her designee that the grounds for suspension of the license under § 516(g) or § 520 of Title 13 no longer exist. No occupational license may be issued in any case in which a license has been suspended pursuant to § 516(g) or § 520 of Title 13."

Section 7. Amend § 2734, Chapter 27, Title 21 of the Delaware Code by adding the following sentence at the end of said section: "An appeal of a suspension of a license pursuant to § 516(g) or § 520 of Title 13 shall be only as provided in Title 13."

Section 8. Amend Section 2905, Chapter 29, Title 21 of the Delaware Code, by redesignating current Subsection (c) as Subsection (d) and by adding a new Subsection (c) to read as follows:

"(c) No assignment may be made or surcharge added solely because a driver license is denied or suspended in accordance with 13 Del.C. §516(g) or §520."

Section 9. Amend Section 3912, Chapter 39, Title 18 of the Delaware Code by designating the first sentence of Section 3912 as Subsection (a) and the second sentence as Subsection (b), and by adding the following after the newly designated Subsection (b):

"(c) No premium may be increased on any contract of casualty insurance based solely on a license denial or suspension imposed in accordance with 13 Del.C. § 516(g) or §520 on a named insured or any other operator who either resides in the same household or customarily operates an automobile insured under such policy."

Section 10. Amend § 3904, Chapter 39, Title 18 of the Delaware Code by adding the following new subsection (c):

"(c) A policy may not be subject to cancellation or nonrenewal solely because the insured's driver license is denied or suspended in accordance with § 516(g) or § 520 of Title 13."

Section 11. Amend § 8810, Chapter 88, Title 29 of the Delaware Code by adding the following new subsection (m):

"(m) The provisions of § 516(g) and § 520 of Title 13 shall supersede any provisions of this section to the contrary and any provisions or procedures, by statute or regulation, of any commission, board or agency named in this section with respect to matters involving any applicant or licensee under § 516(g) or § 520 of Title 13. Upon receipt of notification from the Family Court pursuant to § 516(g) of Title 13, or notice from the Director of the Division of Child Support Enforcement pursuant to § 520 of Title 13 regarding a licensee or applicant, the Director of the Division of Professional Regulation shall forthwith suspend, or deny to such licensee or applicant the issuance or renewal of, any license, permit, certificate, approval, registration or other similar form of permission or authorization to practice or engage in any profession, occupation or business of any commission, board or agency named in this section (but not including any license issued on behalf of a non-profit applicant by the Gaming Control Board as set forth in Chapter 15 of Title 28)."

Section 12. Amend § 2101, Chapter 21, Title 30 of the Delaware Code by adding the following language at the end thereof: "The provisions of § 516(g) and § 520 of Title 13 shall apply and supersede any license requirements of this part with respect to matters involving any applicant or licensee under § 516(g) or § 520 of Title 13. The Department shall forthwith deny the issuance or renewal of any license under this part, or suspend the same, upon receipt of notification from the Family Court pursuant to § 516(g) of Title 13 or notice from the Director of the Division of Child Support Enforcement pursuant to § 520 of Title 13 regarding an applicant or licensee."

Section 13. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 14. This Act shall become effective six (6) months after the day that it is enacted into law.

Approved July 5, 1996

CHAPTER 453  
FORMERLY  
HOUSE SUBSTITUTE NO. 2  
TO  
HOUSE BILL NO. 433

AN ACT TO AMEND CHAPTER 97, TITLE 16, DELAWARE CODE RELATING TO A STATEWIDE TRAUMA CARE SYSTEM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE

Section 1. Amend §9702(13), Title 16, Delaware Code, by redesignating subsection (13) as subsection (14) and all subsequent subsections accordingly and inserting a new subsection (13) to read as follows:

"(13) 'Inclusive Statewide Trauma Care System' means a Trauma System in which all current and future providers of hospital and/or prehospital health care services may participate, at a level commensurate with the scope of their resources, as outlined in subsection (18) of this title.

Section 2. Amend §9702(18), Title 16, Delaware Code by redesignating subsection (18) as subsection (20) and inserting subsections (18) and (19) to read as follows:

"(18) 'Trauma Facility' means an acute care hospital which has received and maintains current State of Delaware designation as a Trauma Center. Categories of trauma facilities in Delaware are as follows:

Regional Level 1 Trauma Center: A regional resource Trauma Center that has the capability of providing leadership and comprehensive, definitive care for every aspect of injury from prevention through rehabilitation.

Regional Level 2 Trauma Center: A regional Trauma Center with the capability to provide initial care for all trauma patients. Most patients would continue to be cared for in this Center; there may be some complex cases which would require transfer for the depth of services of a Regional Level 1 or Specialty Center.

Community Trauma Center: An acute care hospital that provides assessment, resuscitation, stabilization and triage of all trauma patients, arranging for timely transfer of those patients requiring the additional resources of a Regional Trauma or Specialty Center and delivering definitive care to those whose needs match the resources of the Community Trauma Center.

Participating Hospital: An acute care facility which transfers trauma patients with moderate or severe injuries to Trauma Centers after initial resuscitation. When necessary, this facility may provide care to trauma patients with minor injuries. Participating hospitals contribute data to the Delaware Trauma System Registry and Quality Improvement Program.

(19) 'Trauma Patient' means any person with actual or potential bodily damage subsequent to an event which exposed the body to an external force or energy."

Section 3. Amend §9704, Title 16, Delaware Code, by adding thereto a new subsection (d) to read as follows:

"(d) Except for those activities and responsibilities for basic life support, which is under the jurisdiction of the State Fire Prevention Commission, the Office of Emergency Medical Services shall have jurisdiction over the development, implementation and maintenance of a statewide trauma system."

Section 4. Amend §9704, Title 16, Delaware Code, by adding thereto a new subsection (e) to read as follows:

"(e) A Memorandum of Agreement shall be established between the Office of Emergency Medical Services of the Division of Public Health and the State Fire Prevention Commission to foster inclusion and coordination of Basic Life Support Services within the Statewide Trauma System."

Section 5. Amend §9704, Title 16, Delaware Code, inserting a new subsection (f) to read as follows:

"(f) The Director of Public Health shall establish a standing Trauma System Committee and ad hoc committees as deemed appropriate to assist in oversight of the Inclusive Statewide Trauma Care System. The standing Trauma System Committee shall convene at least quarterly. Membership on the standing Trauma System Committee will include, but not be limited to, a representative of each of the following constituencies to be selected from the three counties within the State:

- a. trauma rehabilitation professionals
- b. practicing Trauma Surgeons
- c. practicing Emergency Department physicians
- d. The Association of Delaware Hospitals
- e. Advanced Life Support prehospital providers
- f. Basic Life Support prehospital providers
- g. The State Fire School
- h. practicing trauma subspecialty physicians
- i. practicing Pediatric Surgeons or Pediatricians
- j. practicing Registered Nurses involved in Trauma Patient Care
- k. Emergency Medical dispatchers
- l. Hospital administration
- m. The Delaware State Police Aviation Section
- n. a representative from the State Fire Prevention Commission."

Section 6. Amend §9704, Title 16, Delaware Code, by adding thereto a new subsection (g) to read as follows:

"(g) The Trauma System Committee shall be an advisory group to the Director of Public Health on the following issues:

- A. Rules governing the operation of Delaware's Inclusive Statewide Trauma Care System, which will be based upon national references such as the American College of Surgeons' Resources for Optimal Care of the Trauma Patient: 1993.

B. Recommendations for corrective action based on the reviews of the following:

1.) statewide trauma care system operations, including the monitoring for adherence to adopted policies, procedures, protocols and standards, the availability of appropriate resources and the periodic review of trauma hospital participation (designation) criteria.

2.) the delivery of emergency medical and hospital services by trauma care service providers to trauma patients.

C. Recommendation for modifications of the policies, procedures and protocols of trauma care as a result of system-wide review."

Section 7. Amend §9706, Title 16, Delaware Code, by adding thereto a new subsection (g) to read as follows:

"(g) The Director of Public Health shall, except for those activities and responsibilities for basic life support, which is under the jurisdiction of the State Fire Prevention Commission:

a. Use the Trauma System Committee recommendations as the basis for establishing a plan for the implementation and maintenance of Delaware's Inclusive Statewide Trauma Care System. The State Trauma System Plan shall address each component of trauma care as outlined in national references such as Model Trauma Care System Plan, HRSA-BIHRD, September 1990 and subsequent revisions. These include but are not limited to:

1) prehospital care - standardized and statewide policies, procedure and protocols to be used by all emergency medical service providers and licensed personnel for the identification, treatment and transport of trauma patients.

2) prevention - efforts to decrease the numbers and severity of injuries, resulting in decreased demand for care.

3) hospital care - standards and criteria for hospital personnel, equipment and designation that identify the necessary resources that hospitals must have in order to be recognized within Delaware's Inclusive Statewide Trauma Care System as a specified category trauma facility. These standards and criteria shall be consistent with those identified in national trauma system references, such as the American College of Surgeons' Resources for Optimal Care of the Injured Patient, 1993 and subsequent revisions. All expenses associated with utilizing a nationally recognized accreditation team to verify a hospital's compliance with hospital designation criteria will be the responsibility of the hospital being surveyed.

4) rehabilitative care - standards for the follow-up care for persons with disabilities resulting from injuries.

5) trauma continuing education - The on-going trauma related education for trauma care system personnel/providers to maintain knowledge and skills.

6) trauma care system evaluation - monitor policies and procedures regarding the effectiveness/impact of trauma care systems.

b. The Director of Public Health shall have the authority to promulgate rules for the management of all components of Delaware's Inclusive Statewide Trauma Care System, and shall seek input and review from the Trauma System Committee.

c. Maintain a program of trauma care system evaluation, including a trauma data collection and registry system and a mechanism for evaluating and monitoring system performance throughout the continuum of trauma care."

Section 8. Amend Chapter 97, Title 16, Delaware Code, by adding thereto a new §9707 to read as follows:

"§9707. Confidentiality of Quality Review Program and Participants

1) Confidentiality of Quality Review Program and Participants

As used in this section 'records' means the recordings of interviews and all oral or written reports, statements, minutes, memoranda, charts, statistics, data and other documentation generated by the Trauma System Committee or its subcommittees for the stated purposes of trauma system medical review or quality care review and audit.

All quality management proceedings shall be confidential. Records of the Trauma System Committee, its quality care review committee and members, attendees and visitors at meetings held for stated purposes of trauma system medical review or quality care review and audit shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial or administrative proceeding. Raw data shall not be available for public inspection nor is it a public record within the meaning of the Delaware Freedom of Information Act.

2) Immunity

No person shall be subject to, and shall be immune from, any claim, suit, liability, damages or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination undertaken or performed, or recommendation made while discharging any duty or authority under this chapter, so long as such person acted in good faith without malice, and within the scope of his or her duty or authority under this chapter or any other provisions of the Delaware law, federal law or regulations or duly adopted rules and regulations providing for the administration of this chapter, good faith being presumed until proven otherwise, with malice required to be shown by the complainant."

Section 9. Amend §9703(c), Title 16, Delaware Code by striking subsection (12) in its entirety and substitute a new subsection (12) to read as follows:

"(12) The Trauma Systems Committee Chairman".

Approved July 8, 1996

CHAPTER 454

FORMERLY

SENATE BILL NO. 482

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PERSONAL INCOME TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1102(a), Title 30 of the Delaware Code, by adding to said subsection a new paragraph (7) to read as follows:

"(7) For taxable years beginning after December 31, 1996, the amount of tax shall be determined as follows: 3.1% of taxable income in excess of \$2,000 but not in excess of \$5,000; 4.85% of taxable income in excess of \$5,000 but not in excess of \$10,000; 5.8% of taxable income in excess of \$10,000 but not in excess of \$20,000; 6.15% of taxable income in excess of \$20,000 but not in excess of \$25,000; 6.45% of taxable income in excess of \$25,000 but not in excess of \$30,000; 7.1% of taxable income in excess of \$30,000."

Section 2. Amend §1102(a)(6), Title 30 of the Delaware Code by striking the year "1995," as it appears therein and substituting in lieu thereof the phrase "1995, and before January 1, 1997".

Section 3. Amend §1102(d)(1), Title 30 of the Delaware Code, by striking the symbol and figure "\$40,000" as they appear therein and substituting in lieu thereof the symbol and figure "\$60,000".

Section 4. Sections 1 and 2 of this Act shall be effective for tax years beginning after December 31, 1996.

Approved July 8, 1996

CHAPTER 455

FORMERLY

HOUSE BILL NO. 713

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PERSONAL INCOME TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1102(a), Title 30, Delaware Code, by striking the figure "7.1%" as it appears in paragraph (7) of said subsection and substituting in lieu thereof the figure "6.9%".

Section 2. This Act shall be effective for tax years beginning after December 31, 1996.

Approved July 8, 1996

## CHAPTER 456

## FORMERLY

HOUSE BILL NO. 392  
AS AMENDED BY HOUSE AMENDMENT NO. 1AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO EDUCATION  
REGULATIONS AND LEGISLATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1: Amend § 122, Title 14, Delaware Code, by adding thereto the following subsections:

“(d) The State Board of Education shall perform and issue a written educational impact analysis of any new proposed regulation and of any regulation that is proposed to be continued pursuant to the review required by subsection (e) of this section. Such educational impact analysis shall address the following criteria:

(1) Whether the proposed regulation or the regulation sought to be continued is justified because it will help improve student achievement as measured against state achievement standards;

(2) Whether the proposed regulation or the regulation sought to be continued is justified because it will help ensure that all students receive an equitable education, that their health and safety are adequately protected, and that their legal rights are respected;

(3) Whether the proposed regulation or the regulation sought to be continued preserves the necessary authority and flexibility of decisionmakers at the local board and school level and does not place unnecessary reporting or administrative requirements or mandates upon them;

(4) Whether the proposed regulation or the regulation sought to be continued places decisionmaking authority and accountability for addressing the subject to be regulated in the same entity;

(5) Whether the proposed regulation or the regulation sought to be continued is consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies; and

(6) Whether there is a less burdensome method for addressing the purpose of the proposed regulation or the regulation sought to be continued; and

(7) The cost to the State and local school boards of compliance with the proposed regulation or the regulation sought to be continued.

(e) For the purpose of ensuring that all regulations are current, that unnecessary or unduly burdensome regulations are repealed or modified, and that more frequent comment from affected constituencies may be obtained, the State Board of Education shall establish a process whereby each of its regulations in existence as of January 1, 1997 shall be subjected to review and readoption within the four years succeeding such date. Such review and readoption, or modification or repeal, shall be preceded by publication pursuant to Chapter 101 of Title 29 of this Code. Any such regulation that the State Board readopts or readopts in modified form shall be accompanied by an educational impact analysis as required by subsection (d) of this section. Any regulation adopted by the State Board subsequent to January 1, 1997 shall be made effective for no

more than five years and shall be subject to the review and reoption process set forth in this subsection.

(f) For the purpose of ensuring that state regulations do not impede innovation or the improvement of student achievement, the State Board may, upon application by a local board of education established pursuant to a provision of this title, waive any rule or regulation where: (1) such a waiver would further the accomplishment of state educational policies, particularly those state educational policies addressing student achievement in the core academic subjects of mathematics, science, language arts and social studies; (2) such a waiver would not impose undue administrative burdens upon the State or harm the State's ability to ensure that public funds are properly expended and that applicable state and federal laws are followed; and (3) the purpose of the regulation or rule to be waived can be satisfied in a less burdensome or different manner than through compliance with the rule or regulation. The school board of the district making such waiver request shall give notice of the consideration by notices posted in at least ten public places in the district and on the door of every school in the district at least twenty days prior to the public meeting of the board of education at which the waiver request will be presented and discussed. The public shall be provided an opportunity to present comments concerning the waiver to be requested at a meeting of the local board following posting and preceding its formal adoption.

(g) For the purposes of ensuring that state regulations do not impede innovation or the improvement of student achievement, the local board may propose, upon application of a duly-established school-based committee pursuant to a provision of this title or a school principal of a school without such a committee who demonstrates significant faculty support for the waiver application, that any state rule or regulation, subject to exemption in § 505 of this title be waived where it makes written findings that: (1) such a waiver would further the accomplishment of state and local educational policies, particularly those policies addressing student achievement in the core academic subjects of mathematics, science, language arts and social studies; (2) such a waiver would not impose undue administrative burden upon the State or harm the State's ability to ensure that public funds are properly expended and that applicable state and federal laws are followed; and (3) the purpose of the regulation or rule to be waived can be satisfied in a less burdensome or different manner than through compliance with the rule or regulation. The board of education of the district in which the waiver is requested shall give notice of the receipt of such waiver request as follow:

(1) By notices posted in at least ten public places in the district and on the door of every school in the district at least twenty days prior to the public meeting of the board at which the proposed waiver request will be presented and discussed. The public shall be provided an opportunity to present comments concerning the requested waiver at a meeting of the local board following posting and prior to its formal proposal; and

(2) The board of education shall transmit its written findings pursuant to subsection (g) of this section supporting the proposed waiver to the State Board of Education within five days thereafter. Within twenty days thereof, the State Board may schedule, upon twenty days public notice, a hearing to consider whether to approve the proposed waiver. Absent the scheduling of such a hearing within such time period, the proposed waiver shall be considered approved by the State Board and shall then become effective. If the State Board schedules a hearing to consider a proposed waiver, it shall issue its decision within thirty days of the hearing."

Section 2: Amend Chapter 2, Title 14, Delaware Code to add a new § 206 thereto to read as follows:

"§ 206. Legislative Educational Impact Statements.

(d) Before education legislation is voted upon by either House of the General Assembly, the Legislative Council and Controller General shall perform and issue a

written educational impact analysis of such proposed legislation. The Department of Public Instruction and Budget Office shall provide support to Legislative Council and the Controller General in preparing such analyses. Each educational impact analysis shall address the following criteria:

- (1) Whether the proposed legislation is justified because it will help improve student achievement as measured against state achievement standards;
  - (2) Whether the proposed legislation is justified because it will help ensure that all students receive an equitable education, that their health and safety are adequately protected, and that their legal rights are respected;
  - (3) Whether the proposed legislation preserves the necessary authority and flexibility of decisionmakers at the local board and school level and does not place unnecessary reporting or administrative requirements or mandates upon them;
  - (4) Whether the proposed legislation places decisionmaking authority and accountability for addressing the subject to be regulated in the same entity;
  - (5) Whether the proposed legislation is consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies; and
  - (6) Whether there is a less burdensome method for addressing the purpose of the proposed legislation; and
- (7) The cost to the State and local school boards of compliance with the proposed legislation."

Section 3: Amend Chapter 10, Title 14 by adding thereto a new §1049A. to read as follows:

“§ 1049A. Waiver of Local Regulations.

For the purpose of ensuring that local board regulations do not impede innovation or the improvement of student achievement, any school-based committee established pursuant to this title or the principal of any school without such a Committee who demonstrates significant faculty support for the waiver application may apply to its local board for a waiver of any regulation, rule or policy and the local board may grant such waiver where: (1) such a waiver would further the accomplishment of state and local educational policies, particularly those addressing student achievement in the core academic subjects of mathematics, science, language arts and social studies; (2) such a waiver would not impose undue administrative burdens upon the State or the local district or harm the district's ability to ensure that public funds are properly expended and the applicable state and federal laws are followed; and (3) the purpose of the regulation, rule, or policy to be waived can be satisfied in a less burdensome or different manner than through compliance with the rule, regulation or policy. The school making such waiver request shall give notice of the consideration by notices posted in at least ten public places in its district and on the door of the school at least twenty days prior to the public meeting of the board of education at which the waiver request will be presented and discussed. The public shall be provided an opportunity to present comments concerning the waiver to be requested at a meeting of the local board following posting and preceding its formal adoption.”

Approved July 9, 1996

## CHAPTER 457

## FORMERLY

## HOUSE BILL NO. 604

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SHARED  
DECISION-MAKING AND SCHOOL IMPROVEMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

WHEREAS, the Education Improvement Commission recommended that school communities be held more accountable for enhancing the academic outcomes of students; and

WHEREAS, the Education Improvement Commission concluded that increasing the authority of school communities -- the board of education at the district level, certified and non-certified school employees, parents, community members and, as appropriate, students -- to make key decisions concerning instructional strategy, personnel, budget, student performance, staff development, school climate and organization is critical to achieving the State's goal of educational improvement; and

WHEREAS, the Education Improvement Commission noted that shared decision-making, within organizational structures custom-designed by individual schools and school districts, is a method for increasing the authority of school communities; and

WHEREAS, the Education Improvement Commission connects increased local board and school-level authority with increased accountability by stakeholder groups for continuous improvement in teaching and student learning; and

WHEREAS, the Education Improvement Commission strongly endorsed the voluntary transition to local shared decision-making for this purpose; and

WHEREAS, the Education Improvement Commission recognized that school communities must have or develop the skills, knowledge and attitudes necessary to effectively and efficiently exercise such authority; and

WHEREAS, the Education Improvement Commission suggested that changes to the processes, systems and governance structures used by individual schools and school districts must occur through an evolutionary course which allows school communities a reasonable time period to acquire these new skills, knowledge and attitudes while recognizing that principals and teachers are skilled professionals who have a high degree of training and knowledge; and

WHEREAS, the Education Improvement Commission recognized that the role of the State is to act as a catalyst to promote shared decision-making in individual schools and school districts by developing incentives, through its policies and school finance system, and to encourage schools and school districts to experiment voluntarily with the transition to shared decision-making as a means to achieve the goal of continued improvement of teaching and student learning; and

WHEREAS, the General Assembly finds that allowing school-level communities to make key decisions that affect the academic performance of their schools' students and the safety and climate of their schools is critical to educational improvement; and

WHEREAS, the General Assembly finds that local boards should be encouraged to empower shared-decisionmaking committees and that the State should provide incentives for the creation of such committees; and

WHEREAS, the General Assembly finds that shared-decisionmaking committees should focus on and have authority over issues directly related to academic performance and school discipline and safety; and

WHEREAS, the General Assembly finds the State and local boards should increase the authority of shared-decisionmaking committees to decide how their schools' reasonable share of resources for classroom materials, school-based staff and staff development should be spent.

NOW, THEREFORE:

BE IT ENACTED by the General Assembly of the State of Delaware:

Section 1. Amend Title 14 of the Delaware Code by adding a new Chapter 8 to read as follows:

"Chapter 8. School Shared Decision-making.

§ 801. Definitions.

As used in this chapter,

(a) 'School community' shall mean a community comprised of the stakeholders responsible for providing and structuring a child's education; specifically, the board of education at the district level, certified and non-certified school employees, parents, community members and, as appropriate, students.

(b) 'Shared decision-making' shall mean an inclusive, representative decision-making process in which members of the school community at the school and district levels participate as equals. Shared decision-making may occur at all levels of a school system.

(c) 'Structured conversations and activities' shall mean on-going opportunities for representatives of the entire school community, as defined herein, to collectively and collaboratively explore and become knowledgeable about the processes, systems, and governance structures commonly associated with shared decision-making; to identify the skills, knowledge and attitudes which promote successful shared decision-making; to review the research related to the successes and shortcomings of shared decision-making in educational settings; and to determine the readiness and commitment of the various groups within the school community to proceed with shared decision-making as a means to achieve the goal of improved teaching and student learning, and improved school safety and discipline. The use of professional facilitators to conduct such conversations is advisable and the Department of Public Instruction and local districts shall collaborate with other educational stakeholder groups to make such facilitators available at reasonable costs to districts and schools for such purposes.

§ 802. Shared decision-making at the school district level.

(a) Each board of education shall initiate with other representatives of the school community initial structured conversations and activities concerning the utilization of shared decision-making by April 1, 1998 using such funds as are appropriated for this specific purpose in the annual appropriations act and as specified under § 807(a) of this chapter.

(b) The local board of education shall facilitate the selection of a district shared decision-making advisory committee ("District Advisory Committee") through an inclusive process that reflects the diversity within the school community.

Representatives of employee groups recognized under chapter 40 of this title shall be selected by the relevant exclusive representative in a manner of the exclusive representative's choosing. Employees not organized under chapter 40 of this title shall select their representatives from the membership of their employee groups. For student (where appropriate), parent and community groups, the local board of education shall coordinate the selection of representatives with organizations for each of these groups where they exist.

(c) The structured conversations and activities of the District Advisory Committee shall result in a Report and Recommendation to the local board, through a decision-making process it developed to produce as much agreement as practicable, that:

(1) they wish to pursue shared decision-making further by developing a district transition plan to implement shared decision-making as a means of pursuing school improvement in the district, identifying the process they recommend for establishing a district transition plan, and determining the composition and roles and responsibilities of the "District Transition Team" to develop the district transition plan; or

(2) they recommend that the district not explore shared decision-making further.

(d) Each representative of a stakeholder group who participates in the structured conversations and activities of the District Advisory Committee pursuant to subsection (b) shall sign the Report and Recommendation pursuant to subsection (c). Each such representative shall also indicate that they have made a good faith effort to communicate with their stakeholder group so as to ensure that the views of the membership of their stakeholder group were reflected in the Report and Recommendation.

(e) If the school community agrees to pursue shared decision-making further, the school board shall, after due consideration of the Report and Recommendation of the District Advisory Committee, officially vote to endorse the concept of shared decision-making; the process for establishing a district transition plan; and the composition of the District Transition Team (whose membership shall be selected in accordance with the procedures set forth in § 802(b)); and the roles and responsibilities delegated to the District Transition Team. If the Board has concerns with a recommendation by the District Advisory Committee, it shall remand that recommendation to the District Advisory Committee for its proposed resolution of the concerns. The resolution shall be presented to and endorsed by the Board before the Board applies for a district transition planning grant.

(f) The Department of Public Instruction shall provide local school boards with assistance, guidance and strategies to initiate and plan the implementation of these structured conversations and activities.

#### § 803. District transition plans and grants.

(a) After the local board has endorsed the district transition planning process pursuant to § 802(c), the board shall initiate the district transition plan by applying for a transition planning grant as authorized in the annual state appropriations act or through the State Board's allocation of federal funds.

(b) The State Board of Education shall adopt guidelines for the approval of district transition grants, based upon the recommendations of a State Board advisory committee comprised of representatives of the school community, and shall promulgate such guidelines by January 1, 1997 so that districts may consider them during their activities pursuant to §§ 802 and 803 of this chapter. The guidelines shall require, but not be limited to specifying, that the district demonstrate that the district has:

(1) Conducted structured conversations and activities to make the transition to shared decision-making as evidenced by local board action and the Report and Recommendation of the District Advisory Committee signed by representatives of school community as specified in § 802(d);

(2) Established a District Transition Team;

(3) Established a working procedure for the District Transition Team to reach decisions and resolve conflicts;

(4) Validated significant support from members of the school community;

(5) Established plans for communicating the results of the district transition plan to the broader school community for information and critical review;

(6) Specified within its district transition plan its policy for supporting such activities from its local budget, including the school improvement planning process set forth in § 806 of this chapter, and specifically identified funds to be made available to school committees for their use, such as funds for professional development and classroom materials; and

(7) Described how the various stakeholder groups will formally express their opinion regarding the district transition plan prior to its adoption by the local board of education.

(c) The Department of Public Instruction shall provide local school boards and District Transition Teams with assistance, guidance and strategies to initiate, develop and formally adopt their district transition plans.

(d) The local board of education, following public review and comments, shall be responsible for the final form and formal adoption of the district transition plan.

(e) A local board's decision not to adopt a District Transition Plan for shared-decision-making shall not limit the authority of a school principal who demonstrates significant faculty support to submit a waiver request to the local board pursuant to a provision of this title or to develop a school improvement plan; provided, however, that this subsection shall not deprive the local board of its authority to disapprove a waiver request or a school improvement plan pursuant to its authority under § 1049 of this title.

#### § 804. Shared decision-making at the school level.

(a) Any school in a school district which has adopted a district transition plan as specified in § 803(d) of this chapter shall establish a school-level shared decision-making advisory committee ("School Advisory Committee"). Such school may also submit a written request to the State Board of Education, via its local board of education, in order to receive funds to conduct structured conversations and activities among the school community to decide whether or not to apply to the State Board of Education for a school-level shared decision-making transition grant as specified in § 807(d) of this chapter and as provided for in the annual appropriations act.

(b) The principal shall facilitate the selection of representatives on the School Advisory Committee through an inclusive process as established in the District Transition Plan that has the goal of ensuring a fair selection process for the representatives of constituencies within the school community such as parents, community members, teachers, administrators, other employees, and students (where appropriate) which reflects the diversity within the school community. Such process shall ensure that the members of the various constituencies select their respective representatives.

(c) The structured conversations and activities, as defined in this chapter, shall result in a decision, accompanied by an explanatory report and recommendation, by the School Advisory Committee that, through a process it developed to produce as much agreement as practicable, that:

(1) they wish to pursue share decision-making further by developing a school transition plan to implement shared decision-making for educational improvement in the school; or

(2) they choose not to explore shared decision-making further.

(d) If the School Advisory Committee decides to proceed with shared decision-making, the structured conversations and activities shall result in the development of a process to establish a school transition plan, to determine the composition of the "School Transition Team" and to develop the roles and responsibilities delegated to the School

Transition Team. The School Transition Team representatives shall be selected through the same process established by § 804(b) for their respective constituency groups. The decision as to these issues shall be reflected in the Report and Recommendation pursuant to § 804(c) or in a supplemental Report and Recommendation, signed in accordance with § 804(e).

(e) Each representative of a stakeholder group who participates in the structured conversation and activities of the School Advisory Committee pursuant to subsection (b) shall sign the Report and Recommendation pursuant to § 804(e) and any supplemental Report and Recommendation pursuant to § 804(d). Each such representative shall also indicate that she has made a good faith effort to communicate with her stakeholder group so as to ensure that the views of the membership of her stakeholder group were reflected in the Report and Recommendation.

(f) The Department of Public Instruction and the relevant local district administration shall provide schools with assistance, guidance and strategies to initiate and plan the implementation of these structured conversations and activities.

§ 805. School transition plans and grants.

(a) A school community which chooses to begin transition to shared decision-making, as defined herein, may apply to the State Board of Education via the local board of education for a school transition grant. The State shall provide funding for such grants as authorized in § 807(d) and (e).

(b) The State Board of Education shall adopt guidelines for the approval of school transition grants, based upon the recommendations of an advisory committee comprised of representatives of the school community, and promulgate such guidelines by January 1, 1997. The guidelines shall require, but not be limited to specifying, that the school demonstrates that the school has:

(1) Conducted structured conversations and activities and has agreed to make the transition to shared decision-making as evidenced by the Report and Recommendation signed by representatives of the School Advisory Committee as specified in § 804 (c)-(e).

(2) Established a School Transition Team.

(3) Established a working procedure for the School Transition Team to reach decisions and resolve conflicts.

(4) Validated significant support from members of the school community;

(5) Committed to develop a school improvement plan including comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these goals and including staff development for building the necessary capacities and skills to successfully implement shared decision-making and improve parental involvement;

(6) Established plans for communicating the results of the school improvement plan to the broader school community for information and critical review, and

(7) Described how the various stakeholder groups will formally express their opinion regarding the school transition plan prior to its adoption by the local board of education.

(c) The Department of Public Instruction and the relevant local district administration shall provide school transition teams with assistance, guidance and strategies to initiate, develop and formally adopt their transition plans.

(d) The local board of education, following public review and comments, shall adopt the school transition plan unless evidence demonstrates that the school's transition plan is inconsistent with specific provisions of the adopted district transition plan and such disapproval shall extend only to such inconsistent provisions of the school transition plan.

§ 806. School improvement plans.

(a) A school, which has an approved shared decision-making transition plan as specified in § 805, may apply to the State Board of Education for a school improvement implementation grant. Such grants shall be awarded at the beginning of the fiscal year. A school with an approved application shall be eligible for such grant for the following three years as provided in the annual appropriations act. Subsequent applications may be made only after the review and evaluation of the school improvement plan required by § 808 of this chapter is completed and the results of such are included in the school's application. The State Board of Education shall adopt guidelines for the approval of school improvements grants to be awarded beginning fiscal year 1999, based upon the recommendations of an advisory committee comprised of representatives of the school community, and promulgate such guidelines by January 1, 1998. The guidelines shall require that the school demonstrate that its school improvement plan has the following components:

(1) Comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these and other goals identified by the school, including staff development and parental involvement;

(2) A description of the rationale for the proposed governance structure, stating how and why the governance process should improve decision-making and support continuous improvement in teaching and student learning;

(3) Review by the broader school community with agreement that the school improvement plan is consistent with the school district plan and evidence that the local board of education has formally adopted the school's improvement plan;

(4) A proposed budget that explains the use of resources allocated to the school to support strategies for achieving the school improvement goals;

(5) The structural changes or procedures for providing the necessary time and skill-building to support shared decision-making and continuous improvement in teaching and student learning;

(6) The assessment and evaluation process that the school will use to measure its progress toward achieving its stated goals;

(7) A proposed timeline for phasing-in its school improvement plan; and

(8) A proposed budget for the use of the school improvement grant.

(b) Without limiting the local board's authority to determine district policy pursuant to § 1049 or to disapprove plans to the extent they are inconsistent with the district transition plan, each school committee may propose in its school improvement plan, policies or suggestions relating to subjects, including but not limited to: curricular, instructional and assessment strategies to be used at the school; assignment of staff within the school; assignments of students to classes; the school's calendar; staff development; classroom materials; parental involvement; the need for extra learning time for students through longer days and years and Saturday sessions; the needs of at-risk students; discipline and school climate; teacher orientation and mentoring; and proposed waivers of regulations and district policies.

§ 807. District and school grants supporting shared decision-making.

(a) The amount of appropriations to fund the grants specified in this chapter shall be as determined by the annual appropriations act. The State Board may allocate available federal funds to fund the grants specified in this chapter. School districts and schools shall not be required to provide a local match to these funds but shall be required in the process established by § 803 of this chapter to consider and incorporate in their district transition plan the appropriate level of local budget support for such purposes.

(b) Each school district shall be entitled to receive a grant to conduct structured conversations and activities and to design a shared decision-making transition plan. This grant may be used over a period set forth in the annual appropriations act. Upon written request to the State Board of Education on or before April 1, 1998, a district may use and be awarded up to one third of its grant to conduct its required structured conversations and activities.

(c) Districts meeting the requirements for approval of a transition grant as specified by §§ 803(a), (b) of this chapter and the guidelines developed by the State Board of Education for such grants may be awarded the balance of their grants for development of a district transition plan, provided that no such funding shall be available for award after June 30, 1998 and that any application for such funding shall be made to the State Board on or before May 1, 1998.

(d) Each school in a district which has adopted a district transition plan for shared decision-making, as specified in § 803(d) of this chapter, shall be entitled to receive a grant to conduct structured conversations and activities and to develop a school transition plan which incorporates shared decision-making. The amount of such grants shall be established in the annual appropriations act or by allocation of available federal funds. Such grants shall be made available starting July 1, 1997 and shall not be available for award after June 30, 2000. Any application for such a grant shall be made on or before May 1, 2000. The grants awarded may be used over a period set forth in such act or determined by the State Board in the case of federal funds. The local boards of such schools shall not reduce the funds otherwise allocated to such schools as a result of such grants or otherwise use such grants to supplant local board expenditures. A school may use and be awarded up to one third of its grant to conduct structured conversations and activities.

(e) Schools meeting the requirements for approval of a transition grant as specified by §§ 805(a), (b) of this chapter and the guidelines developed by the State Board of Education for such grants may, if they comply with the deadline set forth in § 807(d), be awarded the balance of their grants for development of the school's transition plan.

(f) Upon the adoption of its school transition plan by the local board of education and upon its subsequent approval every three years pursuant to § 808 of this chapter, a school shall be eligible to be awarded annually a school improvement grant to implement its school improvement plan through the application process set forth in § 806(a) of this chapter. The amount and duration of such grants shall be established by the annual appropriations act. The local boards of such schools shall not reduce the funds otherwise allocated to such schools as a result of such grants or otherwise use such grants to supplant local board expenditures.

(g) School committees for school discipline and climate, formed pursuant to chapter 16 of this title, shall be authorized to continue to receive incentive grants, as provided in chapter 16 of this title and authorized in the annual state appropriations act, until such time as a school transition plan, as defined in § 806 of this chapter, specifies an alternative governance structure to assume the authority and responsibilities specified in chapter 16 of this title. Such school improvement plan shall be presented to the state board of education as evidence upon application for such incentive grants.

§ 808. Review of district and school plans.

District transition plans and school improvement plans shall be reviewed and evaluated at least every three years or more frequently upon a schedule specified within the school's or district's plan to measure continuous progress in achieving the goals specified in the plan. Such review and evaluation shall include the school community. The results of such review and evaluation will be reported in the annual school district and school profiles as specified in this title."

Approved July 9, 1996

## CHAPTER 458

## FORMERLY

SENATE BILL NO. 275  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE REPORTING OF INFORMATION ABOUT PUBLIC EDUCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, in a democracy, the best method of accountability is an informed and engaged citizenry which can demand change by its institutions; and

WHEREAS, this is especially so in public education in Delaware, which is predominantly controlled at the local level by elected boards of education; and

WHEREAS, it is the responsibility of the State to help its citizens become more fully engaged in the educational decision-making process by providing them with timely, understandable and accurate information regarding the public schools; and

WHEREAS, the provision of such information will enable citizens to petition the relevant authorities for improvements, to be better informed voters in school board elections, and to know more about their public schools; and

WHEREAS, such information is vital for parents who need to make informed choices about their children's education, especially in the wake of the State's authorization of public school choice, and to participate effectively in the decision-making process at their children's schools.

NOW, THEREFORE, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1: Amend Chapter 1, Title 14, Delaware Code, by adding a new §124A. thereto to read as follows:

“§ 124A. Annual School Profile Reports.

(a) On or before November 1, 1997, and on or before November 1 of each subsequent year, the Department of Public Instruction shall issue Delaware Public Education School Profiles (hereinafter in this section referred to as “School Profiles”) on the state of Delaware's public schools (including charter, satellite, intensive learning centers, and other special schools) and their progress toward achieving the educational goals established by the General Assembly and the State Board of Education.

(b) The purpose of the School Profiles shall be to monitor progress and trends toward the achievement of the State's educational goals, to provide parents and citizens with information they can use to make good choices for their children, and to hold the public educational system accountable for its performance and cost-effective use of public funds. The School Profiles shall be in a user-friendly form that permits educationally meaningful comparisons among schools and school districts, based on accurate, reliable and normalized data. The School Profiles shall compare data for Delaware schools and school districts to national, regional, and statewide data where informative and practicable to do so.

(c) The State Board of Education shall appoint a School Profiles Advisory Committee within one month of enactment of this section. The Advisory Committee shall be comprised of representatives of teachers, school building administrators, school district administrators, local school board members, parents and the community. The Advisory Committee shall review the indicators to be included in the School Profiles developed by the

Department of Public Instruction and make recommendations to the State Board of Education as necessary.

(d) The School Profiles shall contain, but need not be limited to, information such as the following, which shall, to the extent such information is available and practicable to report on a cost-effective basis, be reported on a district and school-specific basis:

- 1) The mission statement of the school or school district;
- 2) The strategic goals of the school or school district, including progress over time toward achieving these goals;
- 3) Information pertaining to student achievement and educational outcomes as measured against the State Board's standards and other relevant indicators;
- 4) Information pertaining to school safety and discipline and student attendance and truancy;
- 5) Information pertaining to school district administrator-student ratios, school teacher-student ratios, and other staffing ratios;
- 6) Information pertaining to pupil, staff, and school district population demographics;
- 7) Information pertaining to school district revenues, expenditures, tax rates and wealth;
- 8) Information pertaining to school curricular offerings;
- 9) Information pertaining to parent and community involvement in the school and school district;
- 10) Information pertaining to the school district or school supplied by the school district or school to include in the School Profile pertaining to the criteria specified in this subsection; and
- 11) Such other information as the State Board finds will serve the purposes set forth in subsection (b) of this section.

(e) With the goal of encouraging the replication of effective educational policies and practices, the School Profiles shall also highlight examples of exemplary programs, successful teaching, school climate or disciplinary strategies, and other developments that may be of value in improving the performance of Delaware's students and public schools.

(f) The State Board shall require public school districts to file district reports containing the data necessary to prepare the School Profiles and shall prescribe a uniform format for such district reports. To the extent that the information required for the district reports must be filed by districts with the State pursuant to a separate section of this Code or State Board regulation, the State Board shall not require a duplicative report.

(g) The School Profiles will be published, subject to an annual appropriation in the annual State budget act, at the expense of the State. Said Profiles will be printed by the State Board in sufficient quantity and supplied to local school districts in sufficient quantity for distribution to district staff, parents and the community at large."

Section 2: Amend § 124, Title 14, Delaware Code by striking it in its entirety and by inserting in lieu thereof the following:

"§ 124. Annual Report.

The Board shall submit to the Governor, each year on or before the first day of January, an annual report covering the needs of the public education system as identified by the Board in the School Profiles published pursuant to § 124A. of this chapter and other studies of the public

school system conducted by it and the Department. The annual report shall include recommendations for additional legislation and for changes in existing legislation. The recommendations shall be accompanied by prepared bills to be laid before the Governor and the General Assembly."

Section 3: Amend § 1050, Title 14, Delaware Code by deleting it in its entirety and by inserting in lieu thereof the following:

"§ 1050. Annual Report.

On or before August 15 of each year, the school board of each reorganized school district shall file with the State Board of Education a district report as required by § 124A. of this title. Such district report shall be a public document and be made available to the citizens of the school district. Each school district is also encouraged to include in such report such additional information as it believes will help its citizens better understand the current conditions, accomplishments, and policies of the school district, as well as the expenditures, revenues and business and financial transactions of the school district for the prior fiscal year, and the need for the improvement and advancement of the schools within the school district."

Approved July 9, 1996

## CHAPTER 459

## FORMERLY

## SENATE BILL NO. 427

## AS AMENDED BY SENATE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO ALTERNATIVE ROUTES FOR TEACHER CERTIFICATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 12, Title 14, Delaware Code by adding thereto a new subchapter as follows:

“Subchapter IV. Alternative Routes for Teacher Certification

§1260. Requirements for the Participation in Alternative Routes for Teacher Certification Program

(a) Candidates seeking participation in the alternative routes for teacher certification program shall be issued a limited standard certificate of no more than two years duration provided they:

1. Hold a bachelor's degree from an accredited college or university in a coherent major appropriate to the instructional field;
2. Pass the State basic skills test and a State test of subject matter knowledge for fields of teaching specialization;
3. Obtain an acceptable health clearance as per State Board of Education regulations and an acceptable criminal background check clearance; and
4. Obtain and accept an offer of employment in a position that requires instructional certification.

(b) To be eligible for the limited standard certificate in the field of speech-language pathology, the applicant shall:

1. Hold a master's degree in the field of speech-language pathology;
2. Pass a State-administered examination of knowledge in the area of speech-pathology; and
3. Obtain an acceptable health clearance as per State Board of Education regulations and an acceptable criminal background check clearance.

§1261 Requirements for the Alternative Routes for Teacher Certification Program

(a) Each school district or charter school seeking to hire a candidate for the alternative routes program must:

1. Participate in the alternative routes for teacher certification program as established pursuant to subsections (b) or (d) of this section; and
2. Assign a mentor to each teacher participating in the alternative routes program;

(b) There is hereby established an alternative routes for teacher certification program which is intended to provide essential knowledge and skills to teachers participating in the alternative routes for teacher certification program through the following phases of training:

1. A seminar/practicum of no less than 120 hours duration which takes place prior to the time at which the teacher participating in the alternative routes for teacher certification program takes full responsibility for a classroom. This seminar/practicum shall provide such formal instruction or equivalent professional development as shall be required by an alternative routes for teacher certification program established by regulation of the State Board or established by law, in the essential areas for professional study listed in subsection (c) of this section. It shall introduce basic teaching skills through supervised teaching experiences with students. The seminar and practicum components of the experience shall be integrated and shall include an orientation to the policies, organization and curriculum of the employing district.

2. A period of intensive on-the-job supervision beginning the first day on which the teacher participating in the alternative routes for teacher certification program assumes full responsibility for a classroom and continuing for a period of at least 10 weeks. During this time, the teacher participating in the alternative routes for teacher certification program shall be visited and critiqued no less than one time every two weeks by his or her assigned mentor and shall be observed and formally evaluated at the end of 10 weeks by the school administration. At the end of the 10-week period, the teacher participating in the alternative routes for teacher certification program shall receive a formal written progress report from the school administration.

3. An additional period of continued supervision and evaluation of no less than 20 weeks duration. During this period, the teacher participating in the alternative routes for teacher certification program shall be visited and critiqued by the assigned mentor at least four times and shall be observed formally and evaluated by the school administration at least twice. No more than two months shall pass without a formal observation. Opportunities shall be provided for the teacher participating in the alternative routes for teacher certification program to observe the teaching of experienced colleagues.

(c) Approximately 200 hours of such formal instruction or equivalent professional development as shall be required by an alternative routes for teacher certification program established by regulation of the State Board or established by law, in the following topics shall be provided in all three phases of the program combined so as to ensure that National Association of State Directors of Teacher Education and Certification Standards teacher training standards are maintained. Credit shall be granted to a participant in any approved alternative routes to teacher certification program for hours of formal instruction or equivalent professional development successfully completed prior to entry into such program, or during the seminar/practicum prescribed in subsection (b)1. of this section, which courses meet the requirements of this subsection.

1. Curriculum: Studies designed to foster an understanding of the curriculum taught and the assessment of teaching, including topics such as the following: the organization and presentation of subject matter, the development and use of tests and other forms of assessment, the evaluation and selection of instructional materials and the appropriate use of textbooks and teacher's guides, the use and interpretation of standardized tests and teacher-developed instruments, the reading process and other language arts skill-development appropriate to the field of specialization and grade level, and a knowledge of techniques and materials for fostering the development of reading and language arts skills.

2. Student development and learning at all levels: Studies designed to foster an understanding of students, their characteristics as individuals, and the ways in which they learn, including topics such as: student interests, motivation, preventing classroom disruption, creating a healthy learning climate, individual and group learning, language development, individual differences, and the role of technology learning.

3. The classroom and the school: Studies designed to foster an understanding of the school as a social unit and classroom management, including such topics as; the organizational/social structure of public education, the making of teaching decisions,

allocation of instructional time, setting of priorities, pacing of instruction, setting of goals, questioning techniques, student practice and independent work.

(d) Notwithstanding the foregoing, the State Board of Education shall be authorized to prescribe such other alternative routes for teacher certification programs, meeting the minimum criteria set forth in subsection (b) of this section, with appropriate consideration of any recommendations of the Professional Standards Council.

§1262. Requirements for the evaluation of teachers participating in the alternative routes for teacher certification program.

(a) Teachers participating in the alternative routes for teacher certification program shall be observed by the assigned mentor teacher and evaluated by the school administration as per §1261 of this subchapter.

(b) Mentor teachers shall not participate in any way in decisions which might have a bearing on the employment or certification of teachers. They shall not assess or evaluate the performance of teachers unless they are appropriately certified administrators. Interactions between teachers and experienced mentor teachers are formative in nature and considered a matter of professional privilege. Mentor teachers shall not be compelled to offer testimony on the performance of teachers.

§1263. Recommendation for certification of teacher participating in the alternative routes for teacher certification program.

(a) At the conclusion of the alternative routes for teacher certification training program, the school administration shall prepare a comprehensive evaluation report on the performance of the teacher participating in the alternative routes for teacher certification program. This report shall be submitted by the school administration directly to the State Board of Education and shall contain a recommendation as to whether or not an initial standard certificate should be issued to the teacher participating in the alternative routes for teacher certification program.

(b) The final comprehensive evaluation report on each teacher participating in the alternative routes for teacher certification program shall be made on standard forms developed by the State Board of Education.

(c) The final evaluation report on each teacher participating in the alternative routes for teacher certification program shall include one of the following recommendations:

1. Approved: Recommends issuance of an initial standard certificate;
2. Insufficient: Recommends that an initial standard certificate not be issued at this time, but that the candidate be allowed to continue to participate in the alternative routes for teacher certification for an additional period of one year.
3. Disapproved: Recommends that an initial standard certificate not be issued and that the candidate not be allowed to continue in the alternative routes for teacher certification program.

(d) The school administration shall provide the teacher participating in the alternative routes for teacher certification program with a copy of the teacher's written evaluation report and certification recommendation 20 days before submitting it to the State Board of Education.

(e) If the teacher participating in the alternative routes for teacher certification program disagrees with the school administration recommendation, the teacher may, within 15 days of receipt of the evaluation report and certification recommendation, submit to the school administration written materials documenting the reasons that the teacher participating in the alternative routes for teacher certification program believes an initial standard certificate should be awarded or a recommendation of insufficient should be granted. The school administration shall forward all such documentation to the State Board of Education along with the evaluation

report and recommendation concerning certification. The teacher participating in the alternative routes for teacher certification program may contest the unfavorable recommendation pursuant to §1264 of this subchapter.

(f) Teachers participating in the alternative routes for certification program who receive a recommendation of "disapproved" may petition the State Board for approval of additional opportunities to participate in the alternative routes for certification program.

§1264. Procedure for teachers participating in the alternative routes for teacher certification program to contest certification recommendations

(a) When the State Board of Education receives any adverse recommendation concerning the initial standard certification of a teacher participating in the alternative routes for teacher certification program, the Board shall notify the teacher participating in the alternative routes for teacher certification program ten days prior to the date upon which the State Board of Education will consider such recommendation. The Board shall allow the teacher participating in the alternative routes for teacher certification program an additional opportunity to provide the State Board of Education with written materials documenting the reasons that the teacher participating in the alternative routes for teacher certification program believes initial standard certification should be awarded.

(b) The State Board of Education shall take final action concerning the certification of teachers participating in the alternative routes for teacher certification programs in accordance with existing State Board policy on appeals of certificate revocations and denials.

Section 2. A participating teacher in a secondary, non-special education position may meet the requirement for completion of a seminar/practicum set forth in §1261(b)1, by successful completion of a program conforming to the following:

(a) A seminar/practicum of no less than 120 hours duration which shall include an introduction generally to basic teaching skills and specifically to the following standards defined by the National Association of State Directors of Teacher Education and Certification Standards or such successor organization as shall hereafter be established:

- Cultural Diversity - Section 3.3 (Standard I)
- Instructional Strategies/Classroom Management - Section 3.3 (Standards VI, VIII, and IX)
- Methods of Teaching - Section 3.3 (Standard VI)
- Field Experience/Internship - Section 3.3 (Standards VI and IX)

(b) Successful completion of the seminar/practicum requirement established in a) above, shall be established by submission of a certificate of completion from a regionally accredited institution of higher education.

(c) Prior training or experience in any of the areas specified in (a) above shall be credited to the participating teacher upon submission of appropriate documentation by the participating teacher or provider of such training, and approval by the Department of Public Instruction.

Section 3. A participating teacher in a secondary, non-special education position shall meet the requirement for completion of 200 hours of formal instruction or equivalent professional development set forth in §1261(c), by successful completion of the following prescribed courses as defined by the National Association of State Directors of Teacher Education and Certification Standards or such successor organization as shall hereafter be established:

- Cultural Diversity - Section 3.3 (Standard I)
- Human Development and Educational Practices - Section 3.3 (Standards II, III and IV)

- Instructional Strategies/Classroom Management - Section 3.3 (Standards VI, VIII and IX)
- Teaching Reading in the Content Areas - Section 3.3 (Standard VII)
- Introduction to Exceptional Children - Section 3.3 (Standard V)
- Methods of Teaching (in the relevant content area) - Section 3.3 (Standard VI)
- Adolescent Development/Psychology - Section 3.3 (Standard II)
- Field Experience/Internship - Section 3.3 (Standards VI and IX)

Section 4. With respect to any participating teacher who has been hired to begin teaching in the 1996-97 school year, the requirements set forth in §1261(b)1, contained in Section 1 above, that the participating teacher complete a seminar/practicum of no less than 120 hours duration which takes place prior to the time at which the teacher participating in the alternative routes for teacher certification program takes full responsibility for a classroom shall not apply provided that such participating teacher completes such seminar/practicum no later than one year after the date on which such participating teacher takes full responsibility for a classroom.

Section 5. With respect to any participating teacher who has been hired to begin teaching in the 1996-97 school year, the requirements set forth in §1261(c), contained in Section 1 above, that the participating teacher complete approximately 200 hours of such formal instruction or equivalent professional development as shall be required by an alternative routes for teacher certification program established by regulation of the State Board or established by law shall not apply provided that such participating teacher completes such 200 hours no later than three years after the date on which such participating teacher takes full responsibility for a classroom.

Section 6. With respect to any participating teacher who has been hired to begin teaching in the 1996-97 school year, the requirements set forth in §1260(a) that the limited standard certificate be of no more than two years duration shall instead be a limited standard certificate of three years duration.

Section 7. This act shall be effective July 1, 1996.

Approved July 9, 1996

## CHAPTER 460

## FORMERLY

## SENATE BILL NO. 292

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYMENT PRACTICES AND TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE CLEAN INDOOR AIR ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 704, Chapter 7, Title 19 of the Delaware Code by adding a new subsection (f) to read as follows:

"(f) Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the department pursuant to this section, or because (s)he has caused to be instituted or is about to cause to be instituted any proceedings under this section, or has testified or is about to testify in any such proceedings, shall be deemed in violation of this section and shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation."

Section 2. Amend Section 718, Subchapter II, Title 19 of the Delaware Code by labeling the existing provision as subsection "(a)", and adding a new subsection (b) to read as follows:

"(b) It shall be an unlawful employment practice for any employer, employment agency, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discharge, refuse to hire or otherwise discriminate against any person or application for employment or membership on the basis of such person's race, marital status, color, age, religion, sex or national origin, because such person has opposed any practice prohibited by this subchapter or because such person has testified, assisted or participated in any manner in an investigation, proceeding, or hearing to enforce the provisions of this subchapter."

Section 3. Amend Section 735, Subchapter IV, Chapter 7, Title 19 of the Delaware Code by labeling the existing provision under this section as "(a)" and adding a new subsection (b) to read as follows:

"(b) Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the department pursuant to this subchapter, or because (s)he has caused to be instituted or is about to cause to be instituted any proceedings under this subchapter, or has testified or is about to testify in any such proceedings, shall be deemed in violation of this subchapter and shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation."

Section 4. Amend Section 2907, Title 16 of the Delaware Code by labeling the existing provision "(a)" and adding a new subsection (b) to read as follows:

"(b) Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department of Labor pursuant to this chapter, or because (s)he has caused to be instituted or is about to cause to be instituted any proceedings under this chapter, or testified or is about to testify in any such proceedings, shall be deemed in violation of this chapter and shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation."

Approved July 9, 1996

## CHAPTER 461

## FORMERLY

SENATE BILL NO. 325  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE ESTABLISHMENT OF A VIDEOPHONE FUND.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend. Chapter 41, Title 11 of the Delaware Code by adding subsection (d) to §4101 as follows:

"(d) In addition to, and at the same time as, any fine, penalty or forfeiture is assessed to any criminal defendant or any child adjudicated delinquent, there shall be levied an additional penalty of one dollar (\$1.00) imposed and collected by the courts for crimes or offenses as defined in §233 of this title. When a fine, penalty or forfeiture is suspended, in whole or in part, the penalty assessment shall not be suspended.

(1) Upon collection of the penalty assessment, the same shall be paid over to the Prothonotary or clerk of courts, as the case may be, who shall collect the same and transmit it to the State Treasury to be deposited in a separate account for the administration of this subsection, which account shall be designated the "Videophone Fund," which is hereby created. This Fund is to be administered by the Criminal Justice Council. Funds shall be utilized to cover line charges, maintenance costs and upgrading of videophone systems used by state and local law enforcement agencies and the courts.

(2) For each fiscal year, if the balance in the Videophone Fund exceeds \$250,000.00, said funds shall be transferred to the General Fund of the State of Delaware on June 30. The Criminal Justice Council shall submit a detailed spending plan for the use of the videophone funds to the State Budget Director and Controller General no later than September 30 of each fiscal year. No funds shall be expended until the plan is approved by the State Budget Director and the Controller General."

Approved July 9, 1996

CHAPTER 462

FORMERLY

SENATE BILL NO. 303  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO  
PREMARITAL AGREEMENTS; AND PROVIDING FOR A UNIFORM  
PREMARITAL AGREEMENT ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Amend Title 13 of the Delaware Code by deleting Subchapter I, Sections 301 and 302, entitled "Antenuptial and Postnuptial Contracts", in its entirety and redesignating Title 13, Subchapter II, captioned "Married Women", as "Subchapter I."

Section 2. Amend Title 13 of the Delaware Code by adding thereto a new subchapter designated as Subchapter II, which new subchapter shall read as follows:

"Subchapter II. Premarital Agreements.

§321. Definitions

As used in this Subchapter:

- (1) 'Premarital agreement' shall mean an agreement between prospective spouses made in contemplation of marriage, and which is effective upon marriage.
- (2) 'Property' shall mean an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

§322. Formalities

A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

§323. Content

(a) Parties to a premarital agreement may contract with respect to:

- (1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
- (2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
- (3) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
- (4) the modification or elimination of spousal support or alimony;
- (5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;
- (6) the ownership rights in and disposition of the death benefit from a life insurance policy;
- (7) the choice of law governing the construction of the agreement; and

(8) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

§324. Effect of Marriage

A premarital agreement becomes effective upon marriage.

§325. Amendment, Revocation

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. Such amended agreement or revocation is enforceable without consideration.

§326. Enforcement

(a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) such party did not execute the agreement voluntarily; or

(2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) Any issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

§327. Enforcement: Void Marriage

If a new marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

§328. Limitation of Actions

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the time that the parties to the agreement are married. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party."

Section 2. This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states.

Section 3. This Act may be cited as the Uniform Premarital Agreement Act.

Section 4. If any provision of this Act or its application to any person or circumstance is held invalid, the validity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 5. This Act takes effect on September 1, 1996 and applies to any premarital agreement executed on or after that date. Nothing in this Act affects the validity under Delaware law of any premarital agreement entered into prior to September 1, 1996.

Approved July 9, 1996

CHAPTER 463

FORMERLY

SENATE BILL NO. 256

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE  
CORPUS DELICTI RULE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend §301, Title 11 of the Delaware Code by inserting a new subsection (c) to said section to read as follows:

"(c) In any prosecution for any compound crime, including but not limited to first degree murder under §636(a)(2) or §636(a)(6) of this title or for second degree murder under §635(2) of this title, the corpus delicti of the underlying felony need not be proved independently of a defendant's extrajudicial statement."

Approved July 9, 1996

CHAPTER 464

FORMERLY

HOUSE BILL NO. 590  
AS AMENDED BY SENATE AMENDMENT NO. 1 AND  
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 7, TITLE 18, DELAWARE CODE RELATING TO THE  
DISTRIBUTION OF INSURANCE PREMIUM TAXES AND FEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend § 708, Chapter 7, Title 18, Delaware Code by striking the number "50%" as it appears after the word "cover" and before the word "of" and substituting in lieu thereof the number "25%".

Approved July 9, 1996

## CHAPTER 465

## FORMERLY

## HOUSE BILL NO. 515

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO ARREST AND COMMITMENT AND THE POWERS OF THE CAPITOL POLICE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1911, Title 11 of the Delaware Code, by inserting a new paragraph, and by redesignating the subsequent remaining paragraphs. The new paragraph shall read:

"(5) A member of the Capitol Police;"

Approved July 9, 1996

## CHAPTER 466

## FORMERLY

## HOUSE BILL NO. 526

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE POLICE OFFICERS AND FIREFIGHTERS EMPLOYMENT RELATIONS ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1602(1), Title 19 of the Delaware Code, by appending thereto new text, to read:

"For the purposes of paragraph (3) of this subsection, 'employees' shall include each and every person employed by the public employer except: (A) any person elected by popular vote; and (B) any person appointed to serve on a board or commission."

Approved July 9, 1996

CHAPTER 467

FORMERLY

HOUSE BILL NO. 574  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE LAW-ENFORCEMENT OFFICERS' BILL OF RIGHTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 9200, Title 11, Delaware Code by adding a new subsection to read:

"(d) Unless otherwise required by this chapter, no law-enforcement agency shall be required to disclose in any civil proceeding, other than those brought by a citizen against a law-enforcement officer alleging that the officer breached the officer's official duties and that such breach resulted in injury or other damage to the citizen, any:

(1) personnel file; or

(2) internal affairs investigatory file compiled in connection with a law-enforcement officer under investigation or subjected to questioning for any reason which could lead to disciplinary action, demotion, or dismissal."

Approved July 9, 1996

CHAPTER 468

FORMERLY

HOUSE BILL NO. 561  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 4, TITLE 17, DELAWARE CODE, RELATING TO THE POWER OF THE DEPARTMENT OF TRANSPORTATION OR ITS AGENTS TO IMPOSE TOLLS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section. 1. Amend Section 420, Title 17 of the Delaware Code by adding a new subsection "(d)" thereto which shall read as follows:

"(d) The Department shall not impose, establish, levy or collect a toll that it would otherwise be permitted to impose, establish, levy or collect under this section, for any emergency vehicle of a police agency, including marked, semi-marked or unmarked vehicles, engaged in the ordinary course of business of a state, county or municipal police agency."

Approved July 9, 1996

## CHAPTER 469

## FORMERLY

SENATE BILL NO. 312  
AS AMENDED BY SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO LICENSES  
FOR BREWERY-PUBS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend §512B (a), Chapter 5, Title 4 of the Delaware Code by adding a “.” after the word “applicant” in the last sentence of §512B(a) and by striking the phrase “, and where beer is manufactured in the establishment, and is sold for on-premises consumption, in conjunction with the service of complete meals for consideration” where said phrase appears in the last sentence of §512B(a).

Section 2. Amend §512B(b), Chapter 5, Title 4 of the Delaware Code by striking paragraphs (2) through (5) in their entirety and by substituting in lieu thereof the following:

“(2) It may brew, bottle, and sell beer at no more than two (2) licensed establishments, provided that each such licensed establishment qualifies as a separate brewery-pub under this section:

(3) It shall brew no more than 4,000 barrels of beer in any calendar year;

(4) It may sell beer manufactured on licensed premises in labeled barrels, bottles, or other closed containers to wholesalers licensed under this title for delivery by them to persons inside or outside this State.

(5) It may sell at the licensed premises beer manufactured on the licensed premises at retail for consumption off the premises;

(6) It may sell at the licensed premises beer manufactured on the licensed premises for on-premises consumption, and

(7) It shall be prohibited from owning, operating or being affiliated with any other manufacturer or importer of alcoholic liquor, either in or without this State.”

Section 3. This Act shall become effective upon its enactment into law.

Approved July 9, 1996

CHAPTER 470

FORMERLY

SENATE BILL NO. 366  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16, DELAWARE CODE, RELATING TO GENERAL POWERS OF THE SECRETARY, DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend §122, Title 16 of the Delaware Code by adding thereto a new subsection (s) to read as follows:

"s.1. Establish standards for regulation in the operation of adult day care facilities, and grant licenses for the operation of such facilities to persons, associations or organizations which have been approved in accordance with of this title and which pay the appropriate permit fee established below.

2. Upon receipt of an application for a license and the application fee of \$100, the Secretary of the Department of Health and Social Services shall issue a license if the prescribed adult day care facility meets the requirements established under this title. The Secretary shall be authorized to issue restricted, provisional, and other types of licenses and to revoke or suspend any license in accordance with Department regulations. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of \$50, provided that an applicant meets requirements as outlined in the regulations."

Approved July 9, 1996

## CHAPTER 471

## FORMERLY

SENATE BILL NO. 435  
AS AMENDED BY SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO LICENSE  
QUALIFICATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend §2707(b)(7) of Title 21 of the Delaware Code by striking the first sentence of §2707(b)(7) in its entirety and inserting in lieu thereof the following:

"Person who is subject to loss of consciousness due to disease of the central nervous system, unless such person furnishes the Department with a certificate of the person's treating physician, duly licensed to practice medicine and surgery in this State, which certificate states: 'I \_\_\_\_\_ (name of treating physician) hereby certify that I am the treating physician for \_\_\_\_\_ (name of person), that I have been the treating physician for him/her for a period of at least three months, that I am aware of his/her medical history, including his/her history with respect to diseases of the central nervous system, and that such person's infirmity is under sufficient control to permit him/her to operate a motor vehicle with safety to person and property.'"

Section 2. Amend §2707(b)(7) of Title 21 of Delaware Code by deleting the first sentence of the second paragraph therein and replacing such sentence with the following:

"The above provision of this paragraph notwithstanding, if the person's treating physician, duly licensed to practice medicine and surgery in this State, furnishes the Department with a certificate which states: 'I \_\_\_\_\_ (name of treating physician) hereby certify that I am the treating physician for \_\_\_\_\_ (name of person), that I have been the treating physician for him/her for a period of at least three months, that I am aware of his/her medical history, including his/her history with respect to any disease of the central nervous system, that such person's disease no longer requires treatment and that such person can reasonably be expected to suffer no further losses of consciousness on account of such disease.'; the Department may find that the person need no longer submit annual certificates of competence to operate a motor vehicle and shall notify the person accordingly."

Approved July 9, 1996

## CHAPTER 472

## FORMERLY

## SENATE BILL NO. 405

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO BREAST  
CANCER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Subchapter VII, Chapter 11, Title 30, Delaware Code by adding  
thereto a new section as follows:

"§1158. Delaware Breast Cancer Education and Early Detection Fund

(a) There is hereby established a Breast Cancer Education and Early Detection  
Fund for individuals who claim an overpayment of taxes to designate an amount to be deposited  
in such an account or individuals who have an income tax liability to designate an amount to be  
paid to that Fund, pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return  
may designate that \$1 or more shall be deducted from the refund that would otherwise be payable  
to the individual and paid to the Breast Cancer Education and Early Detection Fund. The  
Division of Revenue shall forward the amounts so designated to Women and Wellness, Inc. who  
shall deposit them to the credit of the Delaware Chapter of the National Breast Cancer Coalition  
to be used for breast cancer education and early detection.

(c) An individual who has an income tax liability may, in addition to the  
obligation, include a donation of \$1 or more to be paid to the Breast Cancer Education and Early  
Detection Fund. The Division of Revenue shall forward the amounts so designated to Women  
and Wellness, Inc. who shall deposit them to the credit of the Delaware Chapter of the National  
Breast Cancer Coalition to be used for breast cancer education and early detection.

(d) The Division of Revenue shall provide a space on the face of the Delaware  
income tax return form whereby an individual may voluntarily designate a contribution of an  
amount of \$1 or more to the Breast Cancer Education and Early Detection Fund.

(e) The amount so designated by the individual on the income tax return form  
shall be deducted from the tax refund to which such individual is entitled, or the amount so  
designated may be added to the individual's payment of taxes due and shall not be included in the  
general revenue of the State.

(f) From time to time as determined by the Delaware State Clearinghouse  
Committee, Women and Wellness, Inc. shall submit a detailed report to members of the  
Committee of revenues, expenditures, and program measures for the fiscal period in question.  
Such report shall also be sufficiently descriptive in nature so as to be concise and informative.  
The Committee may cause it to appear before the Committee and to answer such questions as the  
Committee may require."

Approved July 9, 1996

CHAPTER 473  
FORMERLY  
HOUSE BILL NO 700

A BOND AND CAPITAL IMPROVEMENTS ACT OF THE STATE OF DELAWARE AND CERTAIN OF ITS AUTHORITIES FOR THE FISCAL YEAR ENDING JUNE 30, 1997. DEAUTHORIZING STATE GUARANTEED BOND AUTHORIZATIONS AND AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE. AUTHORIZING THE ISSUANCE OF REVENUE BONDS OF THE DELAWARE TRANSPORTATION AUTHORITY. APPROPRIATING FUNDS FROM THE TRANSPORTATION TRUST FUND; DEAUTHORIZING AND REAUTHORIZING CERTAIN FUNDS OF THE TRANSPORTATION TRUST FUND; APPROPRIATING SPECIAL FUNDS OF THE DELAWARE TRANSPORTATION AUTHORITY. REVERTING AND REPROGRAMMING CERTAIN FUNDS OF THE STATE. APPROPRIATING GENERAL FUNDS AND SPECIAL FUNDS OF THE STATE. APPROPRIATING MONIES FROM THE TWENTY-FIRST CENTURY FUND; SPECIFYING CERTAIN PROCEDURES, CONDITIONS AND LIMITATIONS FOR THE EXPENDITURE OF SUCH FUNDS; AND AMENDING CERTAIN PERTINENT STATUTORY PROVISIONS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-quarters of all members elected to each House thereof concurring therein)

Section 1. Fiscal Year 1997 Capital Improvements Project Schedule Addendum The General Assembly hereby authorizes the following projects in the following amounts to be expended for the purposes set forth in this Section and as described in the Fiscal Year 1997 Governor's Recommended Capital Budget and Project Information document. Any authorization balance (excluding Transportation Trust Fund balances) remaining unexpended or unencumbered by June 30, 1999, shall be subject to reversion or deauthorization

Section 2. Deauthorization of State Guaranteed Bonds.

- (a) Amend Section 5054(d)(2) of Title 29 of the Delaware Code, as amended, by striking the number "\$9,126,015" wherever it appears in said Section and inserting in lieu thereof the number "\$8,113,015 "
- (b) Nothing in this Act shall reduce the amount of bonds authorized to be issued by The Delaware Economic Development Authority, or any successor authority, to which may be pledged the full faith and credit of the State below the amount of such bonds issued and unpaid on the effective date of this Act. The provisions of Section 11 of Chapter 387 of Volume 63 of the Laws of Delaware shall apply in this regard

Section 3. Authorization of Twenty-Year Bonds The State hereby authorizes the issuance of bonds, to which the State shall pledge its full faith and credit, such bonds to be issued in such principal amount as necessary to provide proceeds to the State in the amount of Seventy-Nine Million Six Hundred Eleven Thousand Three Hundred Dollars (\$79,611,300) and in the amount of One Million Eight Hundred Ninety Thousand Eight Hundred Dollars (\$1,890,800) local share of school bonds. Bonds authorized to be used by this Section shall mature not later than twenty (20) years from their date of issuance. The proceeds of such bonds, except for local share of school bonds, are hereby appropriated for a portion of the purposes set forth in the Section 1 Addendum of this Act and summarized as follows

SECTION 1 ADDENDUM  
FISCAL YEAR 1997 CAPITAL IMPROVEMENTS PROJECT SCHEDULE

AGENCY/PROJECT	BUDGET UNIT	DFMS NO	BOND AUTHOR-IZATIONS	\$	NON-TRANS REVISION OF STATE GUAR. & REPRD. ANTEED BONDS	STRIPPER GRAMMING WELL	TRANS TRUST FUND REAUTH	TRANS TRUST FUNDS	GENERAL FUNDS	21st CENTURY FUND	TOTAL	
<b>OFFICE OF THE BUDGET</b>												
600 MHz Statewide Broadcast Radio System	10-02-01	90003VBC	\$5,450,100	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,450,100	
600 MHz Statewide Portable/Mobile Radios	10-02-01	96001VGE	0	0	0	0	0	0	2,000,000	0	2,000,000	
600 MHz Statewide Portable/Mobile Radios - Elmora	10-02-01	97001VGE	0	0	0	0	0	0	252,000	0	252,000	
Newark, City of New Castle, Delaware City, Newport												
600 MHz Statewide Portable/Mobile Radios-HCCs - Police	10-02-01	97002VGE	0	0	0	0	0	0	173,500	0	173,500	
600 MHz Statewide Portable/Mobile Radios-Kent Co Vol Firemar	10-02-01	97003VGE	0	0	0	0	0	0	900,000	0	900,000	
Subtotal			\$5,450,100	\$0	\$0	\$0	\$0	\$0	\$3,325,500	\$0	\$8,775,600	
<b>DELAWARE ECONOMIC DEVELOPMENT OFFICE</b>												
Delaware Strategic Fund	10-02-03	84001VGD	\$0	\$0	\$0	\$0	\$0	\$0	\$10,000,000	\$0	\$10,000,000	
Agricultural Biotechnology/Biocontainment Facility	10-03-03	84009VBC	170,000	0	0	0	0	0	0	0	170,000	
Housing Development Fund	10-03-04	80003VGD	0	0	0	0	0	0	102,000	0	102,000	
Subtotal			\$170,000	\$0	\$0	\$0	\$0	\$0	\$10,102,000	\$0	\$10,272,000	
<b>STATE</b>												
HCCs - Northern Regional Library	20-08-01	83003VBC	\$338,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$338,000	
Milabero Public Library	20-08-01	83005VBC	50,000	0	0	0	0	0	0	0	50,000	
Maintenance/Restoration	20-08-04	97004VGM	0	0	0	0	0	0	100,000	0	100,000	
Historical Marker - Gettysburg	20-06-04	97005VGM	0	0	0	0	0	0	20,000	0	20,000	
Historical Marker - Bethel Church	20-06-04	97006VGM	0	0	0	0	0	0	2,000	0	2,000	
Newark Public Library Land Acquisition	20-08-01	97007VGL	0	0	0	0	0	0	136,000	0	136,000	
Corral-Cullinary Memorial Library	20-08-01	97008VGR	0	0	0	0	0	0	13,200	0	13,200	
Subtotal			\$388,000	\$0	\$0	\$0	\$0	\$0	\$271,200	\$0	\$1,259,200	

CHAPTER 473  
FORMERLY  
HOUSE BILL NO 700

A BOND AND CAPITAL IMPROVEMENTS ACT OF THE STATE OF DELAWARE AND CERTAIN OF ITS AUTHORITIES FOR THE FISCAL YEAR ENDING JUNE 30, 1997. DEAUTHORIZING STATE GUARANTEED BOND AUTHORIZATIONS AND AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE; AUTHORIZING THE ISSUANCE OF REVENUE BONDS OF THE DELAWARE TRANSPORTATION AUTHORITY; APPROPRIATING FUNDS FROM THE TRANSPORTATION TRUST FUND; DEAUTHORIZING AND AUTHORIZING CERTAIN FUNDS OF THE TRANSPORTATION TRUST FUND; APPROPRIATING SPECIAL FUNDS OF THE DELAWARE TRANSPORTATION AUTHORITY; REVERTING AND REPROGRAMMING CERTAIN FUNDS OF THE STATE; APPROPRIATING GENERAL FUNDS AND SPECIAL FUNDS OF THE STATE; APPROPRIATING MONIES FROM THE TWENTY-FIRST CENTURY FUND; SPECIFYING CERTAIN PROCEDURES, CONDITIONS AND LIMITATIONS FOR THE EXPENDITURE OF SUCH FUNDS; AND AMENDING CERTAIN PERTINENT STATUTORY PROVISIONS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-quarters of all members elected to each House thereof concurring therein)

Section 1. Fiscal Year 1997 Capital Improvements Project Schedule Addendum. The General Assembly hereby authorizes the following projects in the following amounts, to be expended for the purposes set forth in this Section and as described in the Fiscal Year 1997 Governor's Recommended Capital Budget and Project Information document. Any authorization balance (excluding Transportation Trust Fund Balances) remaining unexpended or unencumbered by June 30, 1999, shall be subject to reversion or deauthorization.

Section 2. Deauthorization of State Guaranteed Bonds.

(a) Amend Section 5054(d)(2) of Title 29 of the Delaware Code, as amended, by striking the number "\$9,126,015" wherever it appears in said Section and inserting in lieu thereof the number "\$8,113,015".

(b) Nothing in this Act shall reduce the amount of bonds authorized to be issued by The Delaware Economic Development Authority, or any successor authority, to which may be pledged the full faith and credit of the State below the amount of such bonds issued and unpaid on the effective date of this Act. The provisions of Section 11 of Chapter 387 of Volume 63 of the Laws of Delaware shall apply in this regard.

Section 3. Authorization of Twenty-Year Bonds. The State hereby authorizes the issuance of bonds, to which the State shall pledge its full faith and credit, such bonds to be issued in such principal amount as necessary to provide proceeds to the State in the amount of Seventy-Nine Million Six Hundred Eleven Thousand Three Hundred Dollars (\$79,611,300) and in the amount of One Million Nine Hundred Ninety Thousand Eight Hundred Dollars (\$1,990,800) local share of school bonds. Bonds authorized to be used by this Section shall mature not later than Twenty (20) years from their date of issuance. The proceeds of such bonds, except for local share of school bonds, are hereby appropriated for a portion of the purposes set forth in the Section 1 Addendum of this Act and summarized as follows:

SECTION 1 ADDENDUM FISCAL YEAR 1997 CAPITAL IMPROVEMENTS PROJECT SCHEDULE											
AGENCY/PROJECT	BUDGET UNIT	DFMS NO	BOND AUTHOR- IZATIONS	DEAUTHOR- IZATION OF STATE GUAR- ANTEED BONDS	NON-TRANS REVERSION & REPRO- GRAMMING	STRIPPER WELL	TRANS TRUST FUND REAUTH	TRANS TRUST FUNDS	GENERAL FUNDS	21st CENTURY FUND	TOTAL
<b>OFFICE OF THE BUDGET</b>											
800 MHz Statewide Backbone Radio System	10-02-01	90002VBC	\$5,460,100	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,460,100
800 MHz Statewide Portable/Mobile Radios	10-02-01	96001VGE	0	0	0	0	0	0	2,000,000	0	2,000,000
800 MHz Statewide Portable/Mobile Radios- Police - Elsmere,	10-02-01	97001VGE	0	0	0	0	0	0	282,000	0	282,000
Newark, City of New Castle, Delaware City, Newport											
800 MHz Statewide Portable/Mobile Radios-NCCo, Police	10-02-01	97002VGE	0	0	0	0	0	0	173,600	0	173,600
800 MHz Statewide Portable/Mobile Radios-Kent Co Vol Firemar	10-02-01	97003VGE	0	0	0	0	0	0	900,000	0	900,000
Subtotal			\$5,460,100	\$0	\$0	\$0	\$0	\$0	\$3,282,500	\$0	\$8,776,600
<b>DELAWARE ECONOMIC DEVELOPMENT OFFICE</b>											
Delaware Strategic Fund	10-03-03	94001VGD	\$0	\$0	\$0	\$0	\$0	\$0	\$10,000,000	\$0	\$10,000,000
Agricultural Biotechnology/Biocontainment Facility	10-03-03	94009VBC	170,000	0	0	0	0	0	0	0	170,000
Housing Development Fund	10-03-04	90003VGD	0	0	0	0	0	0	102,000	0	102,000
Subtotal			\$170,000	\$0	\$0	\$0	\$0	\$0	\$10,102,000	\$0	\$10,272,000
<b>STATE</b>											
NCCo, Northern Regional Library	20-08-01	93003VBC	\$938,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$938,000
Millsboro Public Library	20-08-01	93008VBC	60,000	0	0	0	0	0	0	0	60,000
Maintenance/Restoration	20-08-04	97004VGM	0	0	0	0	0	0	100,000	0	100,000
Historical Marker - Gettysburg	20-08-04	97005VGM	0	0	0	0	0	0	20,000	0	20,000
Historical Marker - Bethel Church	20-08-04	97006VGM	0	0	0	0	0	0	2,000	0	2,000
Newark Public Library Lend Acquisition	20-08-01	97007VGL	0	0	0	0	0	0	138,000	0	138,000
Corbit-Calloway Memorial Library	20-08-01	97008VGR	0	0	0	0	0	0	13,200	0	13,200
Subtotal			\$998,000	\$0	\$0	\$0	\$0	\$0	\$271,200	\$0	\$1,269,200

SECTION 1 ADDENDUM  
FISCAL YEAR 1997 CAPITAL IMPROVEMENTS PROJECT SCHEDULE

AGENCY/PROJECT	BUDGET UNIT	DFMS NO	BOND AUTHOR-IZATIONS	DEAUTHOR-IZATION OF STATE GUAR-ANTEED BONDS	NON-TRANS REVERSION & REPRO-GRAMMING	STRIPPER WELL	TRANS TRUST FUND REAUTH	TRANS. TRUST FUNDS	GENERAL FUNDS	21st CENTURY FUND	TOTAL
<b>ADMINISTRATIVE SERVICES</b>											
Architectural Barrier Removal	30-05-10	91018VBM	\$210,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$210,000
Sussex County Courthouse Renovations	30-05-10	98010VBR	900,000	0	0	0	0	0	0	0	900,000
Energy Efficiency Program	30-05-10	95014VSM	0	0	0	280,000	0	0	0	0	280,000
Carvel Building Renovations	30-05-10	97009VBR	3,100,000	0	0	0	0	0	0	0	3,100,000
Legislative Hall Renovations	30-05-10	90020VBR	2,304,000	0	0	0	0	0	0	0	2,304,000
JP Court 7/18 Construction	30-05-10	98013VBC	2,834,600	0	0	0	0	0	0	0	2,834,600
<b>Department of State Projects:</b>											
Delaware Public Archives Facility	30-05-10	98018VBC	4,000,000	0	0	0	0	0	0	0	4,000,000
Valerans Cemetery Enhancement	30-05-10	94013VGC	0	0	0	0	0	0	50,000	0	50,000
Dayett Mills - Remediation, Asbestos/UST	30-05-10	97010VGM	0	0	0	0	0	0	98,000	0	98,000
Dayett Mills - Stabilization, Race/Dam, Warehouse Roof	30-05-10	97011VGM	0	0	0	0	0	0	90,000	0	90,000
<b>Department of Health and Social Services Projects:</b>											
Campus Renewal	30-05-10	87036VBR	1,030,000	0	0	0	0	0	0	0	1,030,000
Forensic Mental Health Fac -Comegys Replacement	30-05-10	95017VGC	0	0	0	0	0	0	345,000	0	345,000
<b>Department of Services for Children, Youth &amp; Their Families Project:</b>											
Woodshaven-Kruse, Asbestos Abatement	30-05-10	98018VGM	0	0	0	0	0	0	194,000	0	194,000
<b>Department of Correction Projects:</b>											
Prison Construction Program	30-05-10	95018VBC 95019VRC 95019VGC	28,392,400	1,013,000	1,405,300	0	0	0	10,781,800	0	39,592,300
Expansion of Mordcaal Plummer House	30-05-10	97012VBC	748,600	0	0	0	0	0	0	0	748,600
MCVEquipment Supplemental	30-05-10	80008VGM	0	0	0	0	0	0	300,000	0	300,000
<b>Department of Public Safety Projects:</b>											
DEMA Emergency Center/OIS Backup Facility	30-05-10	94016VBC	1,250,000	0	0	0	0	0	0	0	1,250,000
Troop 2 Replacement Planning	30-05-10	97013VBC	200,000	0	0	0	0	0	0	0	200,000
MCVEquipment Supplemental	30-05-10	83049VGM	0	0	0	0	0	0	100,000	0	100,000
State Police Firing Range	30-05-10	95023VBC	600,000	0	0	0	0	0	0	0	600,000

\* 10-Year Bonds

PAGE A - 2

SECTION 1 ADDENDUM  
FISCAL YEAR 1997 CAPITAL IMPROVEMENTS PROJECT SCHEDULE

AGENCY/PROJECT	BUDGET UNIT	DFMS NO	BOND AUTHOR-IZATIONS	DEAUTHOR-IZATION OF STATE GUAR-ANTEED BONDS	NON-TRANS REVERSION & REPRO-GRAMMING	STRIPPER WELL	TRANS TRUST FUND REAUTH	TRANS. TRUST FUNDS	GENERAL FUNDS	21st CENTURY FUND	TOTAL
<b>ADMINISTRATIVE SERVICES Continued.</b>											
<b>Department of Agriculture Projects:</b>											
MCU/Redden State Forest Septic System	30-05-10	94017VGR	0	0	0	0	0	0	25,000	0	25,000
Radden State Forest, Education Center/Meeting Room	30-05-10	97014VBC	170,000	0	0	0	0	0	0	0	170,000
<b>Delaware National Guard</b>											
Bmyra Armory Planning	30-05-10	97018VBP	187,000	0	0	0	0	0	0	0	187,000
MCVEquipment Supplemental	30-05-10	91051VGM	0	0	0	0	0	0	100,000	0	100,000
<b>Fire Prevention Commission Project:</b>											
NCCo. Regional Fire Marshal Office	30-05-10	98020VBC	1,891,800	0	0	0	0	0	0	0	1,891,800
Completion of New Castle Fire Center	30-05-10	95024VBC	494,300	0	0	0	0	0	0	0	494,300
<b>Subtotal:</b>			<b>\$45,792,300</b>	<b>\$1,013,000</b>	<b>\$1,405,300</b>	<b>\$250,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$12,081,800</b>	<b>\$0</b>	<b>\$60,542,200</b>
<b>HEALTH AND SOCIAL SERVICES</b>											
Maintenance and Restoration	35-01-20	97016VGM	\$0	\$0	\$0	\$0	\$0	\$0	\$500,000	\$0	\$500,000
<b>Subtotal:</b>			<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$500,000</b>	<b>\$0</b>	<b>\$500,000</b>
<b>NATURAL RESOURCES AND ENVIRONMENTAL CONTROL</b>											
Conservation Cost Sharing Prog.	40-07-04	85033VGO	\$0	\$0	\$0	\$0	\$0	\$0	\$500,000	\$0	\$500,000
Park Rehabilitation	40-06-02	81031VBM	1,250,000	0	0	0	0	0	0	0	1,250,000
Park Development - Delaware Aquatic Center	40-06-02	80028VBC	2,400,000	0	0	0	0	0	0	0	2,400,000
Cape Henlopen Naval Reserve Facility Renovations	40-06-02	97017VGM	0	0	0	0	0	0	50,000	0	50,000
Indian River Lifesteering Station Restoration	40-06-02	97018VBM	300,000	0	0	0	0	0	0	0	300,000
Beach Preservation	40-07-03	78032VGO	0	0	0	0	0	0	1,000,000	0	1,000,000
Tax/Public Ditches	40-07-02	75031VGC	0	0	0	0	0	0	800,000	0	800,000
<b>Subtotal:</b>			<b>\$3,950,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,450,000</b>	<b>\$0</b>	<b>\$6,400,000</b>

\* 10-Year Bonds

PAGE A - 3

SECTION 1 ADDENDUM  
FISCAL YEAR 1997 CAPITAL IMPROVEMENTS PROJECT SCHEDULE

AGENCY/PROJECT	BUDGET UNIT	DFMS NO	BOND AUTHOR-IZATIONS	DEAUTHOR-IZATION OF STATE GUAR-ANTEED BONDS	NON-TRANS. REVERSION & REPRO-GRAMMING	STRIPPER WELL	TRANS TRUST FUND REAUTH	TRANS. TRUST FUNDS	GENERAL FUNDS	21st CENTURY FUND	TOTAL
<b>PUBLIC SAFETY</b>											
DE State Police Helicopter Replacement	45-01-01	98023VGE		\$0	\$0	\$0	\$0	\$0	\$480,000	\$0	\$480,000
DE State Police 4X4 Vehicles (8 @ \$18,750-1 per Troop)	45-01-01	97019VGE		0	0	0	0	0	150,000	0	150,000
DE State Police Gorelat Jackals (350 @ \$180 ea)	45-01-01	97020VGE		0	0	0	0	0	68,500	0	68,500
DE State Police Scuba Gear	45-01-01	97021VGE		0	0	0	0	0	10,000	0	10,000
	Subtotal			\$0	\$0	\$0	\$0	\$0	\$688,500	\$0	\$688,500
<b>TRANSPORTATION</b>											
System Preservation (75/00)	55-05-00	95034VTT		\$0	\$0	\$0	\$0	\$34,028,000	\$0	\$0	\$34,028,000
System Management (78/00)	55-05-00	95035VTT		0	0	0	2,000,000	8,787,000	0	0	8,787,000
System Expansion (77/00)	55-05-00	95036VTT		0	0	0	0	52,034,000	0	0	52,034,000
Engineering and Contingencies (57/00)	55-05-00	78049VTT		0	0	0	0	1,000,000	0	0	1,000,000
Suburban Streets/Misc. Drainage (56/00)	55-05-00	78043VTT		0	0	0	1,850,000	18,150,000	0	0	18,700,000
Municipal Street Aid (71/00)	55-05-00	69034VTT		0	0	0	0	3,000,000	0	0	3,000,000
Woodland Ferry	55-05-00	97022VGM		0	0	0	0	0	10,000	0	10,000
Reserve Account	55-05-00	90044VTT		0	0	0	0	3,000,000	0	0	3,000,000
	Subtotal			\$0	\$0	\$0	\$3,850,000	\$118,887,000	\$10,000	\$0	\$119,427,000
<b>FIRE PREVENTION COMMISSION</b>											
Hydraulic Rescue Tools (Newark, Claymont, Middletown, Odessa, Brandywine Hundred)	75-02-01	92017VGE		\$0	\$0	\$0	\$0	\$0	\$37,500	\$0	\$37,500
	Subtotal			\$0	\$0	\$0	\$0	\$0	\$37,500	\$0	\$37,500

\* 10-Year Bonds

PAGE A - 4

SECTION 1 ADDENDUM  
FISCAL YEAR 1997 CAPITAL IMPROVEMENTS PROJECT SCHEDULE

AGENCY/PROJECT	BUDGET UNIT	DFMS NO.	BOND AUTHOR-IZATIONS	DEAUTHOR-IZATION OF STATE GUAR-ANTEED BONDS	NON-TRANS. REVERSION & REPRO-GRAMMING	STRIPPER WELL	TRANS TRUST FUND REAUTH	TRANS. TRUST FUNDS	GENERAL FUNDS	21st CENTURY FUND	TOTAL
<b>UNIVERSITY OF DELAWARE</b>											
Add/Renovate Colburn Laboratory	90-01-01	94029VBC		\$4,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$4,000,000
Add/Renovate Purnell Hall	90-01-01	95037VBC		3,000,000	0	0	0	0	0	0	3,000,000
MCI/Equipment Supplemental	90-01-01	97023VGE		0	0	0	0	0	500,000	0	500,000
Georgetown Research & Ed. Ctr, Renovations	90-01-01	98025VBR		70,000	0	0	0	0	0	0	70,000
Athletic Department - Facility Upgrades	90-01-01	95038VGR		0	0	0	0	0	10,000	0	10,000
	Subtotal:			\$7,070,000	\$0	\$0	\$0	\$0	\$510,000	\$0	\$7,580,000
<b>DELAWARE STATE UNIVERSITY</b>											
Economic/Business Administration Bldg.	90-03-01	95039VBC		\$3,538,000	\$0	\$0	\$0	\$0	\$0	\$0	\$3,538,000
MCI/Equipment Supplemental	90-03-01	80074VGM		0	0	0	0	0	500,000	0	500,000
Loop Road/Grounds Improvements	90-03-01	96049VBC		2,800,000	0	0	0	0	0	0	2,800,000
Electrical Distribution Upgrade	90-03-01	98027VBR		864,000 *	0	0	0	0	0	0	864,000
	Subtotal:			\$7,000,000	\$0	\$0	\$0	\$0	\$500,000	\$0	\$7,500,000
<b>DELAWARE TECHNICAL AND COMMUNITY COLLEGE</b>											
Repair and Renovations-Jason Bldg., Owens Campus	90-04-02	96041VBR		\$1,000,000 *	\$0	\$0	\$0	\$0	\$0	\$0	\$1,000,000
Wilmington Campus Expansion	90-04-04	96042VBC		3,875,000	0	0	0	0	0	0	3,875,000
Excellence Through Technology	90-04-01	97024VGE		0	0	0	0	0	500,000	0	500,000
*Planning-Polytech Conversion, Terry Campus	90-04-08	97025VBP		125,000 *	0	0	0	0	0	0	125,000
Child Development/Student Center-Owens Campus	90-04-02	98029VBC		2,000,000	0	0	0	0	0	0	2,000,000
	Subtotal:			\$7,000,000	\$0	\$0	\$0	\$0	\$500,000	\$0	\$7,500,000

\* 10-Year Bonds

PAGE A - 5

SECTION 1 ADDENDUM  
FISCAL YEAR 1997 CAPITAL IMPROVEMENTS PROJECT SCHEDULE

AGENCY/PROJECT	BUDGET UNIT	DFMS NO	BOND AUTHOR-IZATIONS	DEAUTHOR-IZATION OF STATE GUAR-ANTEED BONDS	NON-TRANS REVERSION & REPRO-GRAMMING	STRIPPER WELL	TRANS TRUST FUND REAUTH	TRANS TRUST FUNDS	GENERAL FUNDS	21st CENTURY FUND	TOTAL
STATE BOARD OF EDUCATION											
POLYTECH North Campus - Replacement Plan (100%)	95-39-00	98037VBC	\$2,800,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,800,000
Architectural Barrier Removal (80/40)	95-01-01	91074VBM	180,000 *	0	0	0	0	0	0	0	180,000
Red Clay-Convert Study Ctr to Kindergarten, Meadowood (80/40)	95-32-00	97026VBC	240,000 *	0	0	0	0	0	0	0	240,000
Sussex Vo-Tech, Replace Roof/Mechanical Units (80/40)	95-40-00	97027VBC	270,000 *	0	0	0	0	0	0	0	270,000
Brandywine, Replace Roof-Concord High (80/40)	95-31-00	97028VBC	210,000	0	0	0	0	0	0	0	210,000
Sussex Vo-Tech, Replace 3 Underground Storage Tanks (80/40)	95-40-00	97029VBC	120,000 *	0	0	0	0	0	0	0	120,000
Brandywine, Replace Roof, Lombardy Elem (80/40)	95-31-00	97030VBC	228,000	0	0	0	0	0	0	0	228,000
Sussex Vo-Tech, Expand Septic System (80/40)	95-40-00	97031VBC	82,500 *	0	0	0	0	0	0	0	82,500
Brandywine, Replace Unit Ventilators, Harlan Elem (80/40)	95-31-00	97032VBC	210,000 *	0	0	0	0	0	0	0	210,000
Christina, Renovate Starck (100%)	95-33-00	97033VGC	0	0	0	0	0	0	2,204,100	0	2,204,100
Christina, New Elem., Glasgow Area (80/40)	95-33-00	96042VGC	0	0	0	0	0	0	5,282,300	0	5,282,300
Christina, Renovate Christiana High (80/40)	95-33-00	97034VGC	0	0	0	0	0	0	6,020,800	0	6,020,800
Christina, Renovate Shure/Medill Middle (80/40)	95-33-00	96044VBC	1,333,200	0	0	0	0	0	0	0	1,333,200
Capital, Renovate Dover High School (70/30)	95-13-00	97035VGC	0	0	0	0	0	0	7,807,700	0	7,807,700
Seaford, District Renovations - Design (78/22)	95-23-00	97036VBP	845,900 *	0	0	0	0	0	0	0	845,900
Seaford, Renovate/Modernize Seaford High School (78/22)	95-23-00	97037VGC	0	0	0	0	0	0	3,814,400	0	3,814,400
Caesar Rodney, Replace Existing Jr. HS-Middle (80/20)	95-10-00	97038VBC	920,000	0	0	0	0	0	0	0	920,000
Caesar Rodney, Construct Middle School @ Frear (80/20)	95-10-00	97039VBC	720,000	0	0	0	0	0	0	0	720,000
Sussex Vo-Tech, Adult Education Facility Planning (80/40)	95-40-00	97040VBP	240,000 *	0	0	0	0	0	0	0	240,000
Red Clay, Brandywine Springs Lease/Purchase (100% State)	95-32-00	97041VGC	0	0	0	0	0	0	394,800	0	394,800
State Consortium on Tech Prep Programs (100% State)	95-39-00	97042VGE	0	0	0	0	0	0	260,000	0	260,000
NCCo, Vo-Tech Expansion Planning (80/40)	95-38-00	97043VBR	240,000 *	0	0	0	0	0	0	0	240,000
NCCo, Vo-Tech DE Skills Center Renovations (80/40)	95-38-00	97044VBR	200,000 *	0	0	0	0	0	0	0	200,000
NCCo, Vo-Tech Howard Renovations (80/40)	95-38-00	97045VBR	460,000	0	0	0	0	0	0	0	460,000
Seaford, Renovate Seaford Middle School (78/22)	95-23-00	97046VGR	0	0	0	0	0	0	2,589,100	0	2,589,100
Subtotal			\$8,768,600	\$0	\$0	\$0	\$0	\$0	\$28,133,000	\$0	\$36,902,600

\* 10-Year Bonds

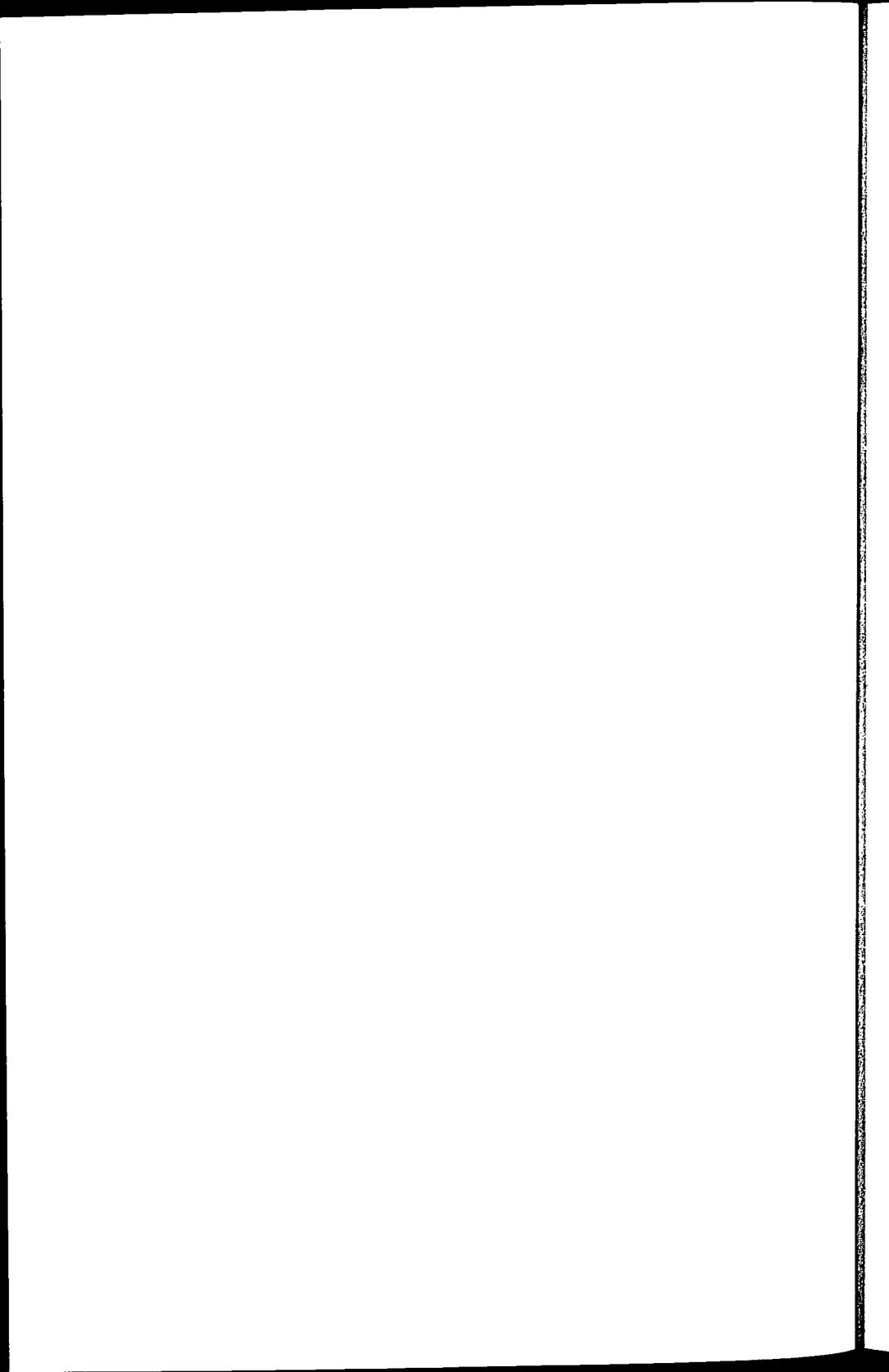
PAGE A - 6

SECTION 1 ADDENDUM  
FISCAL YEAR 1997 CAPITAL IMPROVEMENTS PROJECT SCHEDULE

AGENCY/PROJECT	BUDGET UNIT	DFMS NO	BOND AUTHOR-IZATIONS	DEAUTHOR-IZATION OF STATE GUAR-ANTEED BONDS	NON-TRANS REVERSION & REPRO-GRAMMING	STRIPPER WELL	TRANS TRUST FUND REAUTH	TRANS TRUST FUNDS	GENERAL FUNDS	21st CENTURY FUND	TOTAL
TWENTY-FIRST CENTURY FUND											
Open Space (Land/Water Conservation Trust Fund Project Acct)	25-01-01	98050VCL	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$14,000,000	\$14,000,000
Farmland Preservation	25-01-01	98051VCL	0	0	0	0	0	0	0	14,000,000	14,000,000
Parks Endowment	25-01-01	98052VCO	0	0	0	0	0	0	0	3,000,000	3,000,000
Neighborhood Housing Revitalization	25-01-01	98053VCR	0	0	0	0	0	0	0	5,000,000	5,000,000
Water and Wastewater Infrastructure	25-01-01	98054VCC	0	0	0	0	0	0	0	10,000,000	10,000,000
Community Redevelopment Projects	25-01-01	98055VCC	0	0	250,000	0	0	0	0	10,600,000	10,850,000
		98056VRC									
Educational Technology	25-01-01	98056VCE	0	0	0	0	0	0	0	12,000,000	12,000,000
Advanced Technology Centers	25-01-01	98057VCO	0	0	0	0	0	0	0	8,000,000	8,000,000
Resource, Conservation and Development Projects	25-01-01	98059VCC	0	0	0	0	0	0	0	5,000,000	5,000,000
Subtotal			\$0	\$0	\$250,000	\$0	\$0	\$0	\$0	\$79,800,000	\$79,850,000
GRAND TOTAL			\$86,190,000	\$1,013,000	\$1,855,300	\$260,000	\$3,850,000	\$116,887,000	\$59,107,300	\$79,800,000	\$347,232,600

\* 10-Year Bonds

PAGE A - 7



Department, Agency, or Instrumentality	Amount
Office of the Budget	\$6,450,100
Delaware Economic Development Office	170,000
Department of State	988,000
Department of Administrative Services	46,111,000
Department of Natural Resources and Environmental Control	3,950,000
University of Delaware	7,070,000
Delaware State University	3,536,000
Delaware Technical and Community College	5,875,000
State Board of Education	6,461,200

Purpose	Maximum State Share	Local Share	Total Cost
POLYTECH North Campus Replacement (100%)	\$2,600,000	\$ 0	\$2,600,000
Brandywine, Concord High Roof (60/40)	210,000	140,000	350,000
Brandywine, Lombardy Elem Roof (60/40)	228,000	152,000	380,000
Christina, Renovate Shue/Medill Middle (60/40)	1,333,200	888,800	2,222,000
Caesar Rodney, Replace Existing Jr H S - Middle (80/20)	920,000	230,000	1,150,000
Caesar Rodney, Construct Middle School at Frear (80/20)	720,000	180,000	900,000
New Castle County Vo-Tech Howard Renovations (60/40)	450,000	300,000	750,000
Subtotals	<u>\$ 6,461,200</u>	<u>\$ 1,890,800</u>	<u>\$ 8,352,000</u>
Total			<u>\$79,611,300</u>

Section 4 Authorization of Ten-Year Bonds The State hereby authorizes the issuance of bonds to which the State shall pledge its full faith and credit, such bonds to be issued in such principal amount as necessary to provide proceeds to the State in the amount of Seven Million Five Hundred Ninety-One Thousand Seven Hundred Dollars (\$7,591,700) and in the amount of One Million Three Hundred Twenty-Nine Thousand Dollars (\$1,329,000) for local share of school bonds. Bonds authorized to be issued by this Section shall mature not later than ten (10) years from their date of issuance. The proceeds of such bonds, except for local share of school bonds, are hereby appropriated for a portion of the purposes set forth in the Section 1 Addendum of this Act and summarized as follows:

Department, Agency, or Instrumentality	Amount
Department of Administrative Services	\$694,300
Delaware State University	3,464,000
Delaware Technical and Community College	1,125,000
State Board of Education	2,308,400

Purpose	Maximum State Share	Local Share	Total Cost
Red Clay, Convert Meadowood Study Center to Kindergarten (60/40)	240,000	160,000	400,000
Brandywine, Harlan Elem Replace Unit Ventilators (60/40)	210,000	140,000	350,000
Sussex Vo-Tech, Roof Mechanical Units (60/40)	270,000	180,000	450,000

Sussex Vo-Tech, Replace 3 Underground Storage Tanks (60/40)	120,000	80,000	200,000
Sussex Vo-Tech, Expand Septic System (60/40)	82,500	55,000	137,500
Architectural Barrier Removal (60/40)	160,000	106,700	266,700
Seaford, District Renovations - Design (78/22)	545,900	154,000	699,900
Sussex Vo-Tech, Adult Ed. Facility Planning (60/40)	240,000	160,000	400,000
New Castle Vo-Tech Expansion Planning (60/40)	240,000	160,000	400,000
New Castle Vo-Tech DE Skills Ctr. Renov (60/40)	<u>200,000</u>	<u>133,300</u>	<u>333,300</u>
Subtotals	<u>\$2,308,400</u>	<u>\$ 1,329,000</u>	<u>\$3,637,400</u>
Total			<u>\$7,591,700</u>

**Section 5. Transfers from the State Treasurer's Bond Reversion Account.** Notwithstanding the provisions of other state law, the State Treasurer shall transfer, as funds become available, the sum of One Hundred Two Thousand Eight Hundred Dollars (\$102,800) from the State Treasurer's Bond Reversion Account (94-12-05-03-8101) to the following departments in the following amounts for the purposes set forth in the Section 1 Addendum of this Act.

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
Department of Administrative Services (Prison Construction Program)	\$102,800
TOTAL	<u>\$102,800</u>

**Section 6. Transfers from the State Treasurer's School Bond Reversion Account.** Notwithstanding the provisions of other state law, the State Treasurer shall transfer, as funds become available, the sum of Three Hundred Twenty-Eight Thousand Five Hundred Dollars (\$328,500) from the State Treasurer's School Bond Reversion Account (94-12-05-03-8102) to the following departments in the following amounts for the purposes set forth in the Section 1 Addendum of this Act.

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
Department of Administrative Services (Prison Construction Program)	\$328,500
TOTAL	<u>\$328,500</u>

**Section 7. Appropriation of General Funds.** It is the intent of the General Assembly that Fifty-Nine Million One Hundred Seven Thousand Three Hundred Dollars (\$59,107,300) be appropriated to the following departments, agencies and instrumentalities of the State and in the following amounts for the purposes set forth in the Section 1 Addendum of this Act. Any funds remaining unexpended or unencumbered by June 30, 1999, shall revert to the General Fund of the State of Delaware

Department, Agency, or Instrumentality	Amount
Office of the Budget	\$ 3,325,500
Delaware Economic Development Office	10,102,000
Department of State	271,200
Department of Administrative Services	12,081,600
Department of Health and Social Services	500,000
Department of Natural Resources and Environmental Control	2,450,000
Department of Public Safety	686,500
Department of Transportation	10,000
Fire Prevention Commission	37,500
University of Delaware	510,000
Delaware State University	500,000
Delaware Technical and Community College	500,000
State Board of Education	28,133,000

Purpose	Maximum State Share	Local Share	Total Cost
Red Clay, Brandywine Springs Lease/Purchase (100% State)	\$ 394,600	\$ 0	\$ 394,600
State Consortium on Tech Prep Programs (100% State)	250,000	0	250,000
Christina, Glasgow Elem (60/40)	5,252,300	3,501,500	8,753,800
Christina, Renovate Christiana High (60/40)	6,020,800	4,013,900	10,034,700
Christina, Renovate Sterck (100%)	2,204,100	0	2,204,100
Capital, Renovate Dover High (70/30)	7,607,700	3,260,400	10,868,100
Seaford, Renovate Seaford, Middle (78/22)	2,589,100	730,300	3,319,400
Seaford, Renovate/Modernize Seaford High School (78/22)	3,814,400	1,075,900	4,890,300
TOTAL	\$28,133,000	\$12,582,000	\$40,715,000
TOTAL			\$59,107,300

Section 8. General Fund Reprogramming.

(a) Pursuant to previous years' authorizations by the General Assembly, certain projects have been completed at less than anticipated costs or are unable to be completed. For the fiscal year ending June 30, 1996, the following amounts shall remain as continuing appropriations and shall be transferred in accordance with Section (b) of this Section and shall not be subject to reversion until June 30, 1997.

Project	Authorized Vol & Ch Laws of DE	Project Appropriation Code	Amount
Department of Administrative Services Prison Authority-Construct 2 Chicken Houses	70/210	30-05-10-0193	\$250,000
TOTAL			\$250,000

(b) The State Treasurer shall transfer the remaining appropriation balances listed in Section (a) above to the following fund in the following amount for the purposes set forth in the Section 1 Addendum of this Act. Any remaining appropriation balance not transferred herein shall revert to the General Fund of the State of Delaware

Department, Agency, or Instrumentality	Amount
Twenty-First Century Fund, Community Redevelopment Fund	\$250,000
TOTAL	<u>\$250,000</u>

(c) The following project shall be funded by the Community Redevelopment Fund

Sussex County Senior Services - CHEER	<u>\$250,000</u>
---------------------------------------	------------------

**Section 9 Appropriation of First State Improvement Fund** The State hereby authorizes the appropriation of Forty-Eight Thousand Five Hundred Dollars (\$48,500) from the First State Improvement Fund (86-12-05-03-9600) for a portion of the purposes set forth in the Section 1 Addendum of this Act

Department, Agency, or Instrumentality	Amount
Department of Administrative Services (Prison Construction Program)	\$48,500
TOTAL	<u>\$48,500</u>

**Section 10 Health Facilities Subsidy Fund** Notwithstanding the provisions of Chapter 90 of Title 16 of the Delaware Code there is hereby appropriated the sum of One Hundred Sixty-Two Thousand Nine Hundred Dollars (\$ 162,900) from the Health Facilities Subsidy Fund held by the State Treasurer (96-12-05-03-9400) to the following department in the following amount for the purposes set forth in the Section 1 Addendum of this Act. Any funds remaining unexpended or unencumbered by June 30, 1999, shall revert to the Health Facilities Subsidy Fund

Department, Agency, or Instrumentality	Amount
Department of Administrative Services (Prison Construction Program)	\$162,900
TOTAL	<u>\$162,900</u>

**Section 11 Appropriation of Special Funds.** There is hereby appropriated the sum of Seven Hundred Sixty-Two Thousand Six Hundred Dollars (\$762,600) from the Bond Sale 175 account, held by the State Treasurer (95-12-05-03-8596), to the following department in the following amount for the purpose set forth in the Section 1 Addendum of this Act. Any project funds remaining unexpended or unencumbered by June 30, 1999, shall revert to the General Fund of the State of Delaware. Any remaining balance in the Bond Sale 175 account shall be used to reduce debt service

Department, Agency, or Instrumentality	Amount
Department of Administrative Services (Prison Construction Program)	\$762,600
TOTAL	<u>\$762,600</u>

**Section 12 Allocation of Stripper Well Funds** The State hereby authorizes the Department of Administrative Services to allocate Two Hundred Fifty Thousand Dollars (\$250,000) from the proceeds of the Stripper Well Court Case Settlement for eligible projects up to the amount set forth in the Section 1 Addendum of this Act. All potentially eligible projects shall be submitted to the State Energy Office for review and prioritization according to the energy savings and payback predicted. For all projects eligible for Stripper Well funding, the Department of Administrative Services shall provide technical oversight of such projects and shall disburse funds in a manner consistent with the Stripper Well Court Case Settlement

**Section 13 Continuing Appropriations** For the fiscal year ending June 30, 1996, any sums in the following accounts shall remain as continuing appropriations and shall not be subject to a reversion until June 30, 1997

Fiscal Year Appropriation	Account Codes	Remarks
1992	10-03-03-0180	Dover Civic Center
1989	10-03-03-0184	Dover Civic Center
1991	10-03-03-6112	Dover Civic Center
1992	10-03-03-6215	First State Center
1993	10-03-03-6313	First State Center
1994	10-03-03-6414	Felton Water
1994	10-03-03-6415	First State Center
1996	10-03-03-8105	Strategic Fund
1990	10-03-03-9643	Dover Civic Center
1993	10-03-04-6312	FAF Reserve
1992	20-06-02-0180	Markers
1994	20-08-01-6419	Bear Library
1994	20-08-01-6421	Concord Library
1994	20-08-01-6423	Rehoboth Library
1994	30-05-10-0198	MCI-DHSS
1993	30-05-10-6304	N.G. MCI/Equipment
1994	30-05-10-6412	Asbestos Abatement
1994	30-05-10-6413	Architectural Barrier Removal
1994	30-05-10-6430	Lora Little
1993	30-05-10-8411	Stripper Well
1996	30-05-10-8401	Stripper Well
1994	30-05-10-8404	MCI Administration
1994	30-05-10-8406	DNREC MCI
1996	38-01-40-8401	Stripper Well
1996	40-01-01-8401	Stripper Well
1994	40-06-02-0181	Carpenter Park
1994	40-06-02-6413	Aquatic Center
1994	40-06-02-6417	Carpenter Park
1991	40-06-04-6212	Aquatic Center
1992	40-06-04-6212	Aquatic Center
1993	40-07-02-6313	Resource Conservation and Development
1993	40-08-01-0181	Water Fund
1991	40-08-01-6115	Little Mill
1992	40-08-01-6212	Little Mill
1993	40-08-01-6313	Wastewater SRF
1994	40-08-01-6412	Wastewater Grants
1994	40-08-01-6413	Revolving Loan Program
1994	40-08-01-9668	Revolving Fund
1993	40-08-01-9668	Wastewater SRF
1993	40-08-06-0182	Cockeysville
1994	40-08-06-6414	Plumbing Study
1992	76-01-01-6213	MCI/Equipment
1994	90-04-02-0183	Land-Owens Campus
1993	90-04-02-0187	Land-Owens Campus
1994	90-04-04-0183	Parking-Wilmington Campus
1994	90-04-04-0184	Land-Wilmington Campus

Fiscal Year Appropriation	Account Codes	Remarks
1993	90-04-04-0187	Parking-Wilmington Campus
1994	95-17-00-6413	Shields Elementary
1994	95-17-00-6430	Asbestos
1992	95-18-00-6212	Morris Renovations
1992	95-18-00-6213	Ross Renovations
1993	95-18-00-6312	Lakeview Middle
1993	95-18-00-6313	HVAC Banneker

1994	95-24-00-6493	Architectural Barrier
1993	95-29-00-6312	Townsend Elementary
1994	95-29-00-6493	Architectural Barrier
1994	95-32-00-6412	Lewes Elementary
1991	95-33-00-6113	Barrett Run
1994	95-33-00-6493	Architectural Barrier
1995	95-33-00-6593	Architectural Barrier
1993	95-36-00-0199	Selbyville Middle School
1994	95-36-00-6412	Long Neck
1994	95-36-00-6413	Georgetown
1994	95-36-00-6414	Selbyville
1993	95-38-00-6312	Howard Center
1993	95-38-00-6313	Wilmington Skills Center
1993	95-38-00-6382	MCI
1994	95-38-00-6412	Building Roof

## 21st CENTURY EPILOGUE

## Section 14 Twenty-First Century Fund Appropriations

(a) The General Assembly hereby authorizes the amount of \$79,600,000 to be paid out of the Twenty-First Century Fund from funds deposited in accordance with Section 6102A(b)(1), Title 29, Delaware Code. It is the intent that the appropriation account shall be administered through the Department of Finance and shall be subject to allocation and conditions as set forth in this section. No funds shall be used for agency overhead or personnel-related costs. Any unused authorization in the Project Accounts by June 30, 2005 shall revert to the Twenty-First Century Fund Account in the Department of Finance.

PURPOSE	AMOUNT
Open Space	\$14,000,000
Farmland Preservation	14,000,000
Parks Endowment	3,000,000
Neighborhood Housing Revitalization	5,000,000
Water and Wastewater Infrastructure	10,000,000
Resource Conservation and Development	5,000,000
Community Redevelopment	10,600,000
Educational Technology	12,000,000
Advanced Technology Centers	6,000,000
TOTAL	<u>\$79,600,000</u>

(b) Of the \$10 million appropriated from the Twenty-First Century Funds for Water and Wastewater Infrastructure in Subsection (a) above, \$4.5 million shall be disbursed to the Water and Wastewater Management Account as described in Section 6102A(g)(3) Title 29, Delaware Code. The remaining amount, \$5.5 million, shall be disbursed to the Water Pollution Control Fund and Safe Drinking Water Account as described in Section 6102A(g)(4), Title 29, Delaware Code.

(c) The following projects shall be funded from the Community Redevelopment Account:

PURPOSE	AMOUNT
Stabilization Endowment for the Arts	\$1,000,000
Delaware Historical Society	250,000
Delaware Agriculture Museum and Village Restorations	900,000
Kalmar Nyckel Foundation	400,000
Greenbank Mill Restoration	60,000
NC Co. Kimberton Police Sub-station	500,000
Town of Lewes, Expand Police Facility	83,000

Kent County 911 Command Center	250,000
Claymont Community Center	280,000
Harrington Fair Horse Arena	600,000
Police Athletic League of Delaware	700,000
Boys and Girls Club (Seaford)	900,000
Community Service Building Corporation	1,000,000
YMCA of Delaware	400,000
Sussex County Senior Services - CHEER	250,000
TOTAL	<u>\$7,573,000</u>

(1) Except as herein provided, all projects shall be required to provide a non-State match in accordance with the provisions of Title 29, Delaware Code, Section 6102A(i)(3).

(2) The sum appropriated for the Stabilization Endowment for the Arts Program shall be used to fund the final year commitment for the program. It is the intent of the General Assembly that the funds authorized shall be known as the "Principal" and shall remain intact. Only the interest earned and/or the investment yield from said Principal shall be used for capital related expenses including stabilizing, preserving, rehabilitating or remodeling private, non-profit, art-related facilities. Funds shall be authorized to the Office of the Budget, responsible for the disbursement of said "Principal" for investment by the Trustee of the Community Foundation. The Department of State, Division of the Arts shall be responsible for the disposition of interest earnings and shall submit an annual report of investment and expenditure activity to the Budget Director and Controller General by March 1 of each year. State funds cannot be expended until a two-for-one (2 for 1) non-state match has been secured.

(3) The sum appropriated for Kimberton Police Substation shall be disbursed to the New Castle County Office of Finance for the purpose of establishing a New Castle County Police Substation. No matching funds are required for the expenditure of such funds. The Police Substation shall be located on 856 acres of land donated and located in the community of Kimberton (tax parcel no. 0902140163).

(4) No matching funds shall be required for the Town of Lewes Police Facility.

(5) For the purposes of receiving funding from the Community Redevelopment Fund, the Community Service Building Corporation is deemed to have been granted non-profit status as of June 1, 1994.

(d) Amend Section 6102A(i)(2), Title 29, Delaware Code by deleting said subsection in its entirety and substituting in lieu thereof the following: "(2) The Joint Legislative Committee on the Capital Improvement Program ("the Committee") shall adopt policies and procedures to implement this subsection following the receipt of recommendations by the Office of the Budget and Office of the Controller General, including the establishment of an application process, rules for project administration, rules for applicant eligibility and rules for project eligibility. Such rules shall include and define the State match and non-State match requirements. Upon the receipt and review of applications by the Office of the Budget with the assistance of the Office of the Controller General, the Committee shall select from the among applicants for the award of funds from the Community Redevelopment Account."

(e) Amend Section 6102A(i)(3), Title 29, Delaware Code by deleting the next to last sentence of said subsection which begins with the words "For purposes of this subsection."

Section 15. The Secretary of Finance shall be authorized to make payments to interveners pursuant to the settlement agreement in the Delaware v. New York Supreme Court decision in the amount of \$3.3 million due January 31, 2003 and in the amount of \$17.7 million due January 31, 2004.

Section 16. Open Space. Amend Section 6102A(c)(2), Title 29, Delaware Code by deleting the phrase "2 (State)" as it appears in the second sentence of said paragraph and substituting in lieu thereof the following "1 (State)".

**Section 17. Open Space** Amend Section 6102A(c), Title 29, Delaware Code by adding a new paragraph (4) to read as follows

"(4) For purposes of match, State funds appropriated for the "Suburban Street Program" shall qualify as matching contributions for Greenways projects as described in Section 5423, Title 30, Delaware Code and Section 8017A, Title 29, Delaware Code."

**Section 18. Open Space** Amend Section 6102A(c), Title 29, Delaware Code by adding a new paragraph (5) to read as follows

"(5) Notwithstanding any other provision of the Delaware Code, funds generated from the Earnings Account of the Land and Water Conservation Trust Fund Endowment for Greenways projects as described in Section 5423, Title 30, Delaware Code and Section 8017A, Title 29, Delaware Code shall not be eligible to fund administrative costs."

**Section 19. Farmland Preservation** (a) Amend Section 6102A(d)(2)(A), Title 29, Delaware Code by adding the following phrase "in each fiscal year that monies are appropriated for Farmland Preservation" between the word "transferred" and "to" in said paragraph to read as follows

"(A) Funds of up to \$2 million shall be transferred in each fiscal year that monies are appropriated for Farmland Preservation to the Farmland Preservation Account upon the request of the Secretary of Agriculture for expenditures sufficient to purchase development rights as approved by the Aglands Preservation Foundation

(b) Amend Section 6102A(d)(2)(B), Title 29, Delaware Code by deleting the second sentence of said subparagraph in its entirety

**Section 20. Parks Endowment** Amend Section 6102A(e)(2), Title 29, Delaware Code by adding at the end of said paragraph the following sentence

"Monies received as match from cash contributions shall only be eligible to be counted as match for one year for purposes of calculating the percentage of interest earned and/or investment yield that can be expended"

**Section 21. Educational Technology** Amend Section 6102A(j)(3), Title 29, Delaware Code by deleting said paragraph in its entirety and substituting in lieu thereof the following paragraph

"(3) Beginning in Fiscal Year 1997 and each subsequent Fiscal Year thereafter, a funding match of at least a 1 (non-State) to 1 (State) ratio shall be required to receive funds appropriated from the Twenty-First Century Fund for Educational Technology. Non-State matching funds shall be defined as a sum of money from sources other than State funds. Non-State match received after July 1, 1995 shall qualify as funding match. Funds may be drawn down from the Educational Technology account prior to matching funds being available."

**Section 22** Of the \$12,000,000 appropriated for Educational Technology, an amount not to exceed \$100,000 may be used to fund a contractual services consultant to assist the Delaware Center for Educational Technology in raising non-State matching funds required under Section 6102A (j)(3). The Delaware Center for Educational Technology shall report to the Joint Legislative Committee on the Capital Improvement Program on the expenditure of such funds and any non-State contributions resulting from such expenditure by May 15, 1997

**Section 23.** The Delaware Center for Educational Technology shall prepare a report itemizing the expected cost for all State public schools to fully participate in technology initiatives. Such report shall be based on a recommended configuration of equipment for each school and classroom. The report should include but not be limited to the number and cost of all wiring, hardware, software, training and other items necessary to implement technology in the schools. This report shall be submitted to the members of the Joint Legislative Committee on the Capital Improvement Program, the Office of the Budget and the Office of the Controller General no later than December 31, 1996.

**Section 24. Project Funds Transfer from FY 96 to FY 97.** Within the same County, any Twenty-First Century Funds or match remaining from completed projects authorized as part of the Twenty-First Century Resource, Conservation and Development (RCD) project list pursuant to the FY 96 Bond Appropriation may be utilized for RCD projects in the FY 97 list of projects approved as part of the FY 97 Bond Authorization.

#### OFFICE OF THE BUDGET

**Section 25. City of Wilmington.** Amend Section 6, Volume 70, Chapter 210, Laws of Delaware by adding the following words after the word "vessel" and before the "...", and make necessary repairs to existing water crafts"

**Section 26.** The Section 1 Addendum of this Act makes an appropriation to the Office of the Budget for 800 MHz radios. These funds shall be used for the purchase of 800 MHz end user equipment for State agencies. The Director of Office of Telecommunications Management shall purchase end user equipment for state agencies in accordance with the 800 MHz project implementation plan and proposed schedule.

**Section 27.** The provisions of any other law notwithstanding, the funds appropriated to the Office of the Budget Contingency and One-Time Items (10-02-04) within Volume 69, Chapter 291 and Volume 70, Chapter 118 of the Laws of Delaware, and the funds appropriated in the Section 1 Addendum of this Act for 800 MHz State-wide Portable/Mobile Radios may be used to fund 800 MHz infrastructure and "backbone" system requirements if necessary to maintain the project schedule, subject to the approval of the Budget Director and Controller General.

**Section 28. New Castle County Police Radios.** Funds authorized in the Section 1 Addendum of this Act for New Castle County Police 800 MHz Portable/Mobile Radio Equipment must be matched by New Castle County. Upon submission of invoices for the purchase of radio equipment to the Office of the Budget, a 50 percent reimbursement shall be made.

**Section 29.** The Section 1 Addendum of this Act appropriates \$252,000 for 800 MHz radios for the following municipalities: the Town of Elsmere, the City of New Castle, the City of Newark, the Town of Newport and Delaware City. This appropriation must be matched by said municipalities. Upon submission of invoices for the purchase of radio equipment to the Office of the Budget, a 50 percent reimbursement shall be made.

#### DELAWARE ECONOMIC DEVELOPMENT OFFICE

**Section 30. Composites Research.** The Delaware Economic Development Office is authorized to provide a match of up to \$100,000 to the University of Delaware Center for Composite Materials for federal research grants received that support the development and application of composite manufacturing technology for the benefit of Delaware companies. Such match shall be disbursed from the Strategic Fund upon documentation of the receipt of federal funds allocated to the Center during the fiscal year for these purposes and upon documentation of the relevance of these research projects to Delaware industries' needs and their participation within said projects.

**Section 31. Brandywine-Christina River Improvement Project.**

(a) Funds authorized in the Section 1 Addendum of Volume 70, Chapter 210 of the Laws of Delaware and those funds so listed in Section 42 of Volume 70, Chapter 210 of the Laws of Delaware shall be disbursed to a special fund to be known as the "Brandywine-Christina Rivers Improvement Fund" hereinafter referred to as the "Fund".

(b) The Fund shall be invested by the State Treasurer in securities consistent with the policies established by the Cash Management Policy Board. All monies generated by the Fund shall be deposited in the Fund.

(c) The Fund shall be utilized for expenses necessary to implement the purposes so stated in Section 41 and 42 of Volume 70, Chapter 210, Laws of Delaware.

(d) The Riverfront Development Corporation Board of Directors ("Board") shall be permitted to adjust the dollar limits of the priority projects so specified in Section 41 of Volume 70, Chapter 210, Laws of Delaware when approved by at least eight members of the Board. Any adjustment to the priority project entitled "General Planning and Project Consulting" which contemplates an increase of \$50,000 or more shall require approval of the Co-Chairs of the Joint Legislative Committee on the Capital Improvement Program.

(e) Not more than \$200,000 of interest income shall be used for general operating expenses for the fiscal year ending June 30, 1997.

Section 32. Amend Section 5028, Subchapter I-B, Chapter 50, Title 29 of the Delaware Code by striking the semi-colon at the end of subsection (2) and adding the following "and public facilities."; by striking the "and" at the end of subsection (7), by adding the word "and" to the end of subsection (8), and by adding a new subsection (9) as follows:

"(9) to develop and implement strategies to maintain or enhance important economic sectors in the State."

Section 33. Delaware Strategic Fund. Of the funds appropriated to the Delaware Strategic Fund in Volume 70, Chapter 210, Laws of Delaware, up to \$500,000 may be utilized in order to provide financial assistance in the form of matching grants in an amount not greater than either \$25,000 or 50 percent of the total project costs for environmental assessments of sites associated with the "brownfield" initiative. For purposes of this Section a "brownfield" is defined as a vacant, unoccupied, or underutilized site, with aspect to any portion thereof, which the owner of the site has reasonable cause to believe may, result of any prior commercial or industrial activity by any person, have been environmentally contaminated in a manner that would interfere with the intended use of such site. The Delaware Economic Development Authority shall draft rules and regulations pertaining to eligibility, and establish criteria to administer the assistance.

Section 34. The Delaware Economic Development Office is hereby prohibited from locating any operation that involves the use of hazardous materials at the former Helix Synthesis Technologies site within the Delaware Industrial Park.

#### DEPARTMENT OF STATE

Section 35. Fenwick Lighthouse. Of the funds appropriated in the Fiscal Year 1997 Appropriations Act for Department of State Minor Capital Improvements and Equipment, not more than Fifty Thousand Dollars (\$50,000) shall be used to restore the Fenwick Lighthouse.

Section 36. The Section 1 Addendum of this Act appropriates \$20,000 to the Department of State for an historical marker. This marker shall be located at the Gettysburg National Military Park in Gettysburg, Pennsylvania.

Section 37. North Wilmington Library. Funds authorized in the Section 1 Addendum of this Act and in the Section 1 Addendum of Volume 69, Chapter 386, Laws of Delaware, shall be used to plan and construct a library within the first Senate District.

DEPARTMENT OF FINANCE

**Section 38 Bond Proceeds Reimbursement** (a) Unless not permitted by the Internal Revenue Code of 1986, as amended, whenever the General Assembly authorizes the issuance of the State's general obligation bonds or the Delaware Transportation Authority's revenue bonds to finance the costs of specific capital projects, it is the intent of the General Assembly that the interest on such bonds shall not be included in gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations (the "Regulations") thereunder as they may be promulgated from time to time. Pursuant to the State's budget and financial policies, other than unexpected situations where surplus revenues render bond financing unnecessary or undesirable, no funds other than the proceeds of such bonds are or are reasonably expected to be reserved, allocated on a long-term basis, or otherwise set aside by the State to pay the costs of such specific capital projects. Pursuant to the Authority's budget and financial policies, it is expected that approximately 50 percent of the costs of its capital projects shall be funded on a long-term basis from the proceeds of such bonds. However, after the authorization of such bonds but prior to their issuance, non-bond funds from the State's General Fund or the Authority's Transportation Trust fund or other funds may be advanced on a temporary basis to pay a portion of the costs of such specific capital projects. In that event, it is expected that these non-bond funds will be reimbursed from the proceeds of such bonds when they are issued. This reimbursement may cause a portion of such bonds to become "reimbursement" bonds within the meaning of Section 1 150-2 of the Regulations. Under those Regulations, to preserve the exclusion of the interest on such bonds from gross income for federal income tax purposes, it may be necessary to make a declaration of official intent. The Secretary of Finance is hereby designated as the appropriate representative of the State and the Secretary of Transportation is hereby designated as the appropriate representative of the Authority, and each is authorized to declare official intent on behalf of the State or the Authority, as the case may be, within the meaning of Section 1 150-2 of the Regulations, whenever and to the extent that such declaration is required to preserve such tax treatment.

(b) The General Funds appropriated herein, in Volume 70, Chapter 210 and in Volume 69, Chapter 386, Laws of Delaware, are not subject to the provisions of Section 7414(b), Chapter 74, Title 29, Delaware Code.

DEPARTMENT OF ADMINISTRATIVE SERVICES

**Section 39 Construction Management** (a) Notwithstanding any other State law, the Department of Administrative Services ("Department") shall be responsible for the design and construction of all the projects listed under "Department of Administrative Services" in the Section 1 Addendum of this Act. In performance of these duties, the Department shall in the following areas, consult with the agency for which the project is being or will be completed: pre-design services, architectural plans and preliminary cost estimates, selection and negotiation of professional services, approval of MCI projects to be bid upon and awarded, approval of final architectural and engineering drawings for non-MCI projects, and approval of change orders greater than or equal to 2 percent of a project cost. For those projects that are solely for the purchase of equipment, including projects that are funded in any "MCI and Equipment" line, or any "MCI" line, the Department shall transfer the appropriate amount of funding necessary to purchase the equipment to the agency for which the equipment is being purchased. The appropriate amount of funding shall be determined and agreed to by the Department and the agency for which the equipment is being purchased by August 1, 1996. For those projects for which the appropriation is passed to an entity and for which the State is not a party to the construction contract, the Department shall provide technical assistance.

(b) Notwithstanding any other State law, there is hereby created an Appeals Board, to be composed of the Lieutenant Governor, the Budget Director, and the Controller General. The Appeals Board shall approve the use of all unencumbered monies after that project is deemed "substantially complete." A project shall be deemed "substantially complete" when the project is occupied by 75 percent of the planned tenants or when deemed completed by the Appeals Board. One year after a project is deemed "substantially complete," any unencumbered authorization balance shall revert. In no case shall this Section empower the Appeals Board to allow for the expenditure of funds for uses other than for the funds' authorized purpose(s).

(c) Use of Minor Capital Improvement and Equipment funds in order to ensure completion of a Major Capital Improvement project involving construction of a new facility is prohibited.

(d) The Department shall submit a quarterly status report to the Budget Director and Controller General on all incomplete projects.

**Section 40.** During Fiscal Year 1997, no construction manager contracts for public school projects may be signed unless approved by the Secretary of the Department of Administrative Services.

**Section 41. Construction Quality Improvements.** (a) Notwithstanding any other State law, any contract awarded in Fiscal Year 1997 by any state agency/school district for a non-transportation public works project may include a provision that the successful bidder on a specialty contract perform, at a minimum, a fixed percentage of the work of said public works contract up to 50 percent of the total contract bid. Factors to be considered by the awarding agency in setting the required percentage of amount of work the successful bidder must perform may include the degree of difficulty involved in the agency's administration of the work covered under the terms of the public works contract; the degree of specialty work contemplated in the contract including, but not limited to, the amount of plumbing, electrical wiring, heating, roofing, insulation, weather-stripping, masonry, bricklaying or plastering work under the contract; and the time period required in which to complete the public works project. The terms of the contract shall so specify reasons for the stated percentage in its general terms and conditions. The decision of the agency setting the required percentage shall not be set aside by any court of competent jurisdiction as long as there is a rational basis for setting the required fixed percentage to be performed by the contractor. If the successful bidder fails to perform pursuant to the terms of this provision, the agency awarding and/or administering the contract may invoke the provisions of Subsection 6910, Title 29, Delaware Code.

(b) Any agency may prequalify subcontractors for any contracts awarded in Fiscal Year 1997 for non-transportation public works projects as long as said agency follows the procedures outlined in Subsection 6905, Title 29, Delaware Code. In addition, if an agency prequalified subcontractors pursuant to this Section, no contractor shall list a subcontractor in its subcontractor listing if said subcontractor has not been prequalified by the agency.

**Section 42. Department of Health and Social Services, Stockley Center.** Any remaining unencumbered balances from the Stockley Pool or Covered Walk appropriations may be used for general improvements on the Stockley Campus.

**Section 43. Department of State, Veteran's Cemetery.** Any remaining funds authorized for the Vault Expansion project may be used for general enhancements to the cemetery to include an outside interment facility and expansion of the maintenance building.

**Section 44.** The Section 1 Addendum to this Act appropriates \$186,000 to the Department of Administrative Services for Dayett Mills. Of this amount, \$90,000 shall be used for stabilization improvements to the race and dam system and a new warehouse roof. The remaining \$96,000 shall be used for asbestos removal and removal of underground storage tanks.

**Section 45.** The Section 1 Addendum of this Act provides \$194,000 to the Department of Administrative Services for Woodshaven Kruse. It is the intent of the General Assembly that this appropriation and all previously authorized funds for Woodshaven Kruse be utilized for the purpose of asbestos removal.

**Section 46.** Notwithstanding any other State law for Fiscal Year 1997 any professional services contract for which an Agency is a party with probable fees, including reimbursable expenses and amendments, greater than \$20,000 for the completed job will be subject to the provisions of this section.

(a) Each Agency shall publicly announce, not less than once a week for 2 consecutive weeks in a newspaper published or circulated in each County of the State, when professional services are required except:

(1) In case of an emergency pursuant to §6903(a)(2) of Title 29; or

(2) Where professional services are determined by the Agency to be necessary during the course of completion of a previously awarded contract; and

a. The Agency determines that it would be in the best interest of the State to procure such additional or supplemental professional services from a firm already under contract for which the supplemental and additional professional services are required, and

b. Such additional or supplemental professional services are within the scope of the contract

(b) Such announcement shall include

- (1) The project identification.
- (2) General description and scope of the project.
- (3) Location.
- (4) Deadline for submission of brief letters of interest.
- (5) Criteria for selection of professionals including any special criteria required for any particular project.
- (6) Indication of how interested professionals can apply for consideration.
- (7) The Agency's intention to award to more than one firm, if applicable, and
- (8) A description of the selection process to be used

(c) Additional advertising shall be at the discretion of the Agency

For the purposes of this section, the term agency shall include Delaware Technical and Community College and Delaware State University.

In the event that Senate Substitute 2 for Senate Bill 223 of the 138th General Assembly is enacted, this section shall be null and void

**Section 47. University of Delaware** (a) Notwithstanding any other State law, the Department of Administrative Services ("Department") is authorized to sell up to 5 acres of State-owned lands, Kent County Tax Parcel #ED-05 77 00-01-18 00, to the University of Delaware, for the sum of \$175,000

(b) The proposed transaction is to provide the University of Delaware a site suitable for the construction of its Kent County offices and a State of Delaware Personnel Training Room. Nothing in this proposed transaction is intended to preclude the University of Delaware constructing additional facilities to house the Department of Transportation Laboratory Facility.

**Section 48. Legislative Hall** Notwithstanding the provisions of any other State law, the Department of Administrative Services is authorized to award a contract for renovations to Legislative Hall, Phase II, to Honya Associates, Inc., providing they meet all applicable bonding requirements.

**Section 49. The Section 1 Addendum of this Act appropriates funds to renovate Legislative Hall.** Included within the scope of these renovations shall be telecommunications equipment adequate to allow computer hookup at each legislator's desk and other necessary connections.

## DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

**Section 50. Secure Care Improvement Plan.** Upon the completion of new residential units for adjudicated youth at the Delaware Youth and Family Campus, all vacated residential units remaining within the secure facility not demolished under the improvement plan shall no longer be utilized for the purpose of providing bed space for adjudicated youth.

## DEPARTMENT OF CORRECTION

**Section 51. Correctional Facilities.** (a) The Section 1 Addendum of this Act provides second year funding in order to program, plan, site and construct an appropriate number of cells to ensure adequate secure capacity for pre-trial and adjudicated adults. The term adult shall also encompass those juveniles who have been committed through Superior Court and who shall be so treated as part of the adult population through the Department of Correction classification system. Of such funds authorized, the Secretary of the Department of Administrative Services, as provided through construction management services, shall consult with the Commissioner of Corrections to ensure expedient programming, planning and construction of authorized correctional facilities. None of the funds authorized herein or in prior fiscal years are intended to supplant federal funds.

(b) Use of any federal grant funds awarded and approved by the State Clearinghouse Committee for the purpose of constructing correctional facilities shall have the technical oversight of the Secretary of Administrative Services as defined in the appropriate Section of this Act pertaining to Construction Management to ensure proper use and timely completion of all such construction projects authorized herein.

(c) If the Department of Administrative Services and Department of Correction show justification to exceed the dollar limits established for a specific facility and reductions of equal value can be shown within one or more facility, the Department of Administrative Services shall be permitted to make the adjustments, pending the Construction Appeals Board approval

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

**Section 52. Beach Preservation.** The General Assembly hereby authorizes One Million Dollars (\$1,000,000) to the Department of Natural Resources and Environmental Control ("Department") in the Section 1 Addendum of this Act to renourish and preserve the State's beaches. The Department may not encumber the funds appropriated herein for privately-owned ocean beaches. The Department may not encumber the funds appropriated herein for publicly accessible municipal ocean beaches until at least an equal amount of non-state funds are available for such projects. The funds provided for beach preservation as defined in Chapter 61 of Title 30 of the Delaware Code can be used for local match and if so designated, shall be reimbursed by the Department on an equal basis to each such county or town for which a beach preservation project has been accomplished. The availability of the aforementioned non-state matching funds must be approved by the Budget Director and the Secretary of the Department.

**Section 53. Conservation Cost-Sharing Program.** (a) It is the intent of the General Assembly that Eight Hundred Thousand Dollars (\$800,000) appropriated to the Department of Natural Resources and Environmental Control ("Department") in the Section 1 Addendum of this Act be used for the Department's Soil and Water Conservation Program. The Department shall spend one-third of such funds for use in each County.

**Section 54.** Except for land acquired by approval of the Open Space Council or approved through a Bond and Capital Improvement Act, land shall not be purchased by the Department of Natural Resources and Environmental Control without prior approval of the Co-Chairs of the Joint Legislative Committee on the Capital Improvement Program provided, however, that the Department is not prohibited from conducting studies, surveys or other contractual arrangements that would normally precede land acquisition procedures.

**Section 55. Cape Henlopen Pier Project.** The Section 1 Addendum of this Act authorizes funds for Park Rehabilitation. A portion of these funds shall be used install central air conditioning in the Bait and Tackle facility included in the Cape Henlopen Pier Project.

**Section 56. Nanticoke River Project.** All unencumbered funds in the Nanticoke River project appropriations shall be transferred to the Delaware Economic Development Office

(10-03-03) to ensure completion of said project.

**Section 57.** The Section 1 Addendum to this Act appropriates \$2,400,000 for the Delaware Aquatic Center ("Center"). It is the intent of the General Assembly that this appropriation along with appropriations contained in previous Bond and Capital Improvements Acts represents final State funding for this project including any future General Fund or Appropriated Special Fund operating costs. This does not preclude a successful vendor from applying to the State for any small business loan assistance.

To ensure timely completion of the Center and to address issues relating to the Center's ongoing operations, the Department of Natural Resources and Environmental Control (DNREC) with the assistance of the Delaware Economic Development Office (DEDO) shall have the following responsibilities and authority

- a) To ensure the construction of the Center at a level of State funds not to exceed the amount currently authorized;
- b) To make provisions for the operation of the facility utilizing non-state funds.
- c) To solicit requests of interest and subsequent negotiations for private investment towards construction and operation of the Center;

Before entering into any contractual agreement for construction and operation of the facility, the Secretary of DNREC shall submit a proposal to be approved by the Co-chairs of the Joint Legislative Committee on the Capital Improvement Program, the Budget Director and the Controller General.

In the event DNREC and DEDO are not satisfied with the submission of letters of interest or subsequent negotiations, they may reject all proposals and shall file a written report to the Joint Legislative Committee on the Capital Improvement Program, the Budget Director, and the Controller General advising of alternative recommendations.

Notwithstanding any other provisions of the Delaware Code to the contrary, DNREC may enter into long-term contractual arrangements with respect to the construction and/or operation of the Center. If construction of the Center has not been initiated by July 1, 1999, any remaining appropriations which are unencumbered shall be subject to reversion

**Section 58.** The Department of Natural Resources and Environmental Control, Division of Parks and Recreation shall expend from the Earnings Account of the Land and Water Conservation Trust Fund an amount not to exceed \$45,000 for the development of the Cape Henlopen Bikeway

**Section 59.** Notwithstanding the provisions of any other state law, should the passenger vessel, "Delafort", be sold or otherwise disposed of by the Department of Natural Resources and Environmental Control net proceeds shall be deposited to the State Agency Bond Reversion Account and reauthorized for the purpose of making enhancements to Fort Delaware State Park. Such reauthorization shall be reviewed by the Budget Director and the Controller General and approved by the Co-chairs of the Joint Legislative Committee on Capital Improvement Projects prior to the movement of funds.

**Section 60** Of the interest monies generated on the principal deposited in the Land and Water Conservation Trust Fund before 1995, no more than \$20,000 may be spent for the combined administrative costs of the Open Space Council and the Council on Greenways and Trails.

**Section 61.** It is the intent of the General Assembly that a Shellpot Creek Abatement Committee ("Committee") be established to develop and implement a plan to correct flooding in the Shellpot Creek area in New Castle County. The Committee shall be composed of the following members: two members of the State Senate, to be appointed by the President Pro Tem, two members of the House of Representatives, to be appointed by the Speaker of the House, the Secretary of the Department of Natural Resources and Environmental Control or his designee, the Secretary of Transportation or his designee, the New Castle County Executive or his designee, a representative of the New Castle County Soil and Water Conservation District and three persons to be appointed by the Governor. The President Pro Tem shall name the Co-Chair of the Committee from the Senate and the Speaker of the House shall name the Co-Chair of the Committee from the House.

**Section 62.** The City of Seaford shall be deemed eligible to receive loan funds from the Hazardous Substance Cleanup Act (HSCA) Loan Fund, as authorized by Title 7, Subsection 9113 (c)(6) of the Delaware Code.

#### DEPARTMENT OF PUBLIC SAFETY

**Section 63. Helicopter Acquisition.** The Section 1 Addendum of this Act authorizes funds for the lease-purchase of a new helicopter. It is anticipated that the helicopter being replaced shall be retained by the Delaware State Police for the purpose of providing full helicopter coverage during maintenance of four helicopters within their existing operating budget. The Insurance Coverage Office is herein authorized to purchase the appropriate helicopter insurance necessary for four helicopters.

**Section 64.** The Section 1 Addendum of this Act appropriates \$500,000 to the State Police Firing Range. This appropriation shall be matched by \$500,000 from State Police ASF accounts.

#### DEPARTMENT OF TRANSPORTATION

**Section 65. Transportation Trust Fund Authorizations.** (a) There is hereby appropriated One Hundred Seventeen Million, Eight Hundred Sixty-Seven Thousand Dollars (\$117,867,000) from the Transportation Trust Fund for transportation programs as set forth in the Section 1 Addendum to this Act.

(b) To fund a portion of the amount set forth in (a) above, the Delaware Transportation Authority is hereby authorized to issue bonds in an amount not to exceed Forty-Six Million, Nine Hundred Thousand Dollars (\$46,900,000) pursuant to the provisions of Chapter 14, Title 2, Delaware Code, as amended, of which Forty-Three Million Dollars (\$43,000,000) shall be used for purposes set forth in the Section 1 Addendum to this Act with the remainder of Three Million, Nine Hundred Thousand Dollars (\$3,900,000) to be used to fund issuance costs and necessary reserves for the Reserve Account.

(c) As projects and programs are complete within the following "old" program categories made available by previous acts, and as unexpended balances therein are determined to be in excess of those program needs, as identified by the Department, the Department of Transportation is authorized to transfer such balances to "new" program categories in such amounts as deemed appropriate by the Department.

##### "Old" Program Categories

Advanced Planning (60/00)  
Advanced R/W & Corridor Preservation (59/00)  
Rehabilitation & Reconstruction (64/00)  
Pave & Rehabilitation (64/00)  
Bridge Placement & Rehabilitation (65/00)  
Safety & Intersection Improvements (63/00)  
Traffic Control Devices (61/00)  
Dirt & Surface Treatment Roads (62/00)  
Public Transit Improvements (73/00)  
Corridor & Non-Corridor Improvements (66/00)

##### "New" Program Categories

Program Development (74/00)  
System Preservation (75/00)  
System Management (76/00)  
System Expansion (77/00)

(d) To deauthorize Suburban Street Fund balances and reauthorize such balances in accordance with the Section 1 Addendum of this Act

Deauthorize	Amount	Reauthorize	Amount
Suburban Street Program (56/00)	(\$1,550,000)	Suburban Street Program	\$1,550,000

**Section 66 Department of Transportation Accounts** (a) Any funds appropriated from any source to the Department of Transportation ("Department") shall be accounted for by program category as specified in the Section 1 Addendum to this Act. Amounts indicated for individual projects in the "Supplemental Information for Transportation Projects" are the Department's best estimates of cost, but may vary depending on bid results and project designs. The descriptions and limits are general in nature and are to be used only for project identification purposes. It is the intent of the General Assembly that the Department of Transportation make all reasonable efforts to ensure the timely completion of projects subject to the limitation of the total funds available in each program.

(b) The Department is directed to continue inspecting the condition of bridges and pavements in the State of Delaware and to use the System Preservation Program funds made available by this Act and the Bridge Program, the Rehabilitation and Reconstruction, and the Pave and Rehabilitation Program funds made available by previous acts to ensure the bridge repairs and replacements and pavement resurfacing and rehabilitations are carried out in an expeditious manner based on the Department's priority and management systems.

(c) It is the intent of the General Assembly that the Co-Chairs of the Joint Legislative Committee on the Capital Improvement Program shall be delegated the responsibility of approving modifications to the list of paving and rehabilitation projects in the "System Preservation" portion of the "Supplemental Information for Transportation Projects" when the Department of Transportation needs such modifications. These changes may be made subject to the Co-Chairs' approval, when (a) the Department has completed or determined that it has sufficient funds on hand to complete projects in the program category, or (b) when projects so listed cannot be constructed in the construction season covered by this Act because of conflicting public works projects in progress or scheduled or for other compelling reasons, and (c) funds appropriated to the System Preservation program category are available for use on additional or other projects fitting within that category. In modifying the list, the Department must substitute the next suitable paving and rehabilitation project(s) from the most recently approved Department of Transportation Capital Improvement Program or from the most recent project priority "System Preservation" listing. A copy of the changes shall be forwarded to the Budget Director and the Controller General.

(d) Any funds appropriated from the "Suburban Street Program" (56/00) of the "Supplemental Information For Transportation Projects" attached hereto may be designated for Greenways having a transportation component as long as those Greenways will be dedicated to public use. Legislators may designate monies to be appropriated into a general pooled account to be used statewide, or may reserve monies for Greenways projects to be designated at a later time, or may designate specific sums of monies to specific Greenways projects. For the purposes of this Section, a project shall be deemed to have a "transportation component" whenever it involves walkways, pathways, bikeways, trails or other routes for the movement of people or goods. Project estimates shall be prepared by the Department of Natural Resources and Environmental Control (DNREC) and processed through the Department of Transportation's (DOT) Suburban Street Program procedure for inclusion in the Capital Improvement Act by the General Assembly. Funds appropriated through this Act will be funded from the Transportation Trust Fund and transferred to DNREC by DOT. DNREC will be responsible for the design, rights-of-way purchasing, construction and maintenance of such Greenways and establishing a process similar to DOT's process for administering the Suburban Street Program.

(e) The Department of Transportation is hereby authorized to explore and/or construct feasible alternatives to traffic signals, including, but not limited to, geometric design changes to intersections or crossovers in the vicinity of those locations where traffic signals may currently exist or otherwise be considered as warranted.

**Section 67.** Authorized but unspent funds exist in the Department of Transportation's Engineering and Contingency Program Account (55-05-00-57-00), derived from the Section 1 Addendum to Volume 69, Laws of Delaware Chapter 77, and previously directed for expenditure in Section 63 thereof for the Small Retail Gasoline Station Assistance Program. It is the intent of the General Assembly that from this source Two Million Dollars (\$2,000,000) shall be reprogrammed to the System Management Program Account (55-05-00-76-00) for the uses outlined in the Section 1 Addendum attached hereto.

**Section 68.** The State Police shall have the primary authority to enforce traffic laws on limited access highways within municipalities in the State of Delaware unless the State Police have, by specific signed agreement, authorized another jurisdiction to enforce traffic laws on a limited access highway.

**Section 69.** Amend Section 61, Chapter 386, Volume 69, Laws of Delaware, by adding the following after the last sentence thereof: "As used in this section, the terms 'restrict' and 'restrictions' shall mean the limitation of commercial access to MacArthur Drive, south of Windsor Drive, solely from the property known as the Crowl Corporation property, and from no other commercial property

**Section 70.** The Department of Transportation is directed to meet with the community of Cannonshire and to provide appropriate noise mitigation and community screening as part of the SR 896 project. Should the community association prefer all or a portion of the required noise mitigation to be in the form of an earthen berm the Department should provide it as part of the SR 896 project.

**Section 71.** The Department of Transportation is requested to pursue vacation of that portion of the right-of-way owned by the State of Delaware between the western-most point of Gender Road and the eastern-most point of Dawson Drive. The Department shall report to the Joint Legislative Committee on Capital Improvement Programs on the results of said vacation proposal by April 30, 1997

**Section 72.** It is the intent of the General Assembly that pending the eventual disposition of approximately 270 acres of land located at the southeast intersection of Route 40 and Route 896 presently owned by the Department of Transportation, a working group comprised of the Secretary of Transportation, the Secretary of Public Safety, and three members of the Joint Legislative Committee on the Capital Improvement Program (as appointed by the Co-Chairs of the Committee) shall assess the Department's proposed uses of said lands. The working group's assessment shall include review of a comprehensive plan as prepared by the government of New Castle County, which shall incorporate the necessary transportation infrastructure. The working group shall present their findings to the Joint Committee no later than June 1, 1997

**Section 73.** Johnson Road from Augusta Drive, including the parking area of Our Redeemer Lutheran Church, shall meet the criteria for funding under the State's Suburban Street Program

**Section 74.** Amend Section 8401, Title 29, Delaware Code, by creating a new subsection "(7)" thereof to read as follows

"(7) To establish a selection process intended to promote engineering and design quality and ensure maximum competition by professional companies of all sizes providing engineering or architectural design services, pursuant to the authority granted in Section 307 of the National Highway System Designation Act of 1995, P. L. 104-59. In developing this process, the Department shall also comply with the Professional Services Negotiation Act, 29 Delaware Code, Chapter 69, Subchapter II, as amended. In addition, the Department shall comply with limits on costs reimbursement, including but not limited to overhead limits, established by its Consultant Policy Committee. In setting such limits, the Consultant Policy Committee shall consider the goal of the selection process set forth in the first sentence of this subsection, as well as the reasonable cost of architectural or engineering services."

**Section 75.** The provisions of Section 74 shall become effective August 1, 1996

**Section 76.** Amend Section 5211(a), Title 30, Delaware Code, by deleting the phrase "25 days" appearing therein and inserting in lieu thereof the phrase "72 hours"

**Section 77.** Amend Section 5211(a), Title 30, Delaware Code, by deleting the numeral "\$11.50" appearing in the last sentence thereof and inserting in lieu thereof the numeral "\$15.00"

**Section 78.** Notwithstanding any provision of the Merit Rules or the Delaware Code to the contrary, it is the intent of the General Assembly that those certain former non-merit employees, whose positions were funded by the Delaware Transportation Authority or its subsidiaries, who (a) were subject to the provisions of Section 241 of Chapter 118, Volume 70, Laws of Delaware, and (b) subsequently obtained employment in merit system positions prior to December 31, 1996, shall be entitled to carry forward all sick leave credits accrued but unused while in said non-merit system status, to be available for use as with any sick leave credits accrued while employed in merit positions

**Section 79.** It is the intent of the General Assembly that notwithstanding any other provisions of the Delaware Code, the Department of Transportation is authorized to provide fuel tax refunds to the following class of taxpayers, under the following conditions: (1) If a taxpayer filed a request for a tax credit under the provisions of Title 30 Delaware Code, Section 5204 between July 11, 1995 and July 11, 1996, and if all or a portion of the tax credit sought was determined to be ineligible for credit due to the operation of Laws of Delaware, Chapter 210, Section 70 then the portion of the credit found not eligible for that reason shall be refunded to the taxpayer, and (2) the Department is authorized to establish alternative procedures for granting this refund under terms and conditions other than those contained in the existing promulgated regulations, including but not limited to a reduced audit requirement, with the express intent to minimize administrative inconvenience and cost to all parties while providing adequate protection for the State

**Section 80.** It is the intent of the General Assembly that the Department of Transportation offer for public sale those lots deemed surplus property located on Limestone Road adjacent to Derrnckson Drive. Notwithstanding the provisions of Section 137, Title 17 of the Delaware Code, the Department is authorized to accept the highest bid should it be lower than the approved appraised value

**Section 81.** The Section 1 Addendum to this Act authorizes \$52,034,000 to the Department of Transportation for System Expansion. Included in this amount, is authorization for right-of-way acquisition and preliminary engineering for a Dover Transit Center. Prior to expenditure of any funds for this project, the Department of Transportation shall report to the Joint Legislative Committee on the Capital Improvement Program as to the proposed location of said facility

**Section 82.** The Section 1 Addendum of this Act appropriates \$52,034,000 to the Department of Transportation for System Expansion. Of this amount, sufficient funds shall be allocated to the Thompsons Bridge Road (Delaware 92) Project for the purpose of constructing a pedestrian span over the Brandywine Creek connecting Brandywine Creek State Park on the west bank with the Woodlawn tract on the east bank

**Section 83.** It is the intent of the General Assembly that a working group comprised of the Secretary of Transportation, the Secretary of Public Safety and two members of the General Assembly (as appointed by the Co-Chairs of the Joint Legislative Committee on the Capital Improvement Program) and members of the community be convened no later than September 1, 1996. The working group shall discuss and assess the proposed uses of the State-owned land on which the Division of Motor Vehicle Inspection Lanes is currently located, at Airport Road in New Castle, in the event said inspection lanes are relocated. The working group will determine the best use of said property. The working group's assessment shall be consistent with the comprehensive plan as prepared by the government of New Castle County

The working group shall present their findings to the Joint Legislative Committee on Capital Projects. No action regarding said land can be taken by the Department of Transportation without approval of the Joint Legislative Committee on the Capital Improvement Program

**Section 84.** The Department of Transportation is requested to pursue vacation of the following right-of-way owned by the State of Delaware

East Edinburg Drive in Wilton between Langford Place and the Timberidge Apartments

Jamestown Drive between the community of Jamestown and the Meadows of Wilton

The Department shall report to the Joint Legislative Committee on the Capital Improvement Program on the results of said vacation directive by April 30, 1997

**Section 85.** It is the intent of the General Assembly that \$1,000,000 previously programmed for DTA Capital (55-05-00-73-00) shall be reprogrammed for Infrastructure improvements at the New Castle County Airport.

STATE FIRE COMMISSION

Section 86. Hydraulic Rescue Tools. It is the intent of the General Assembly that the funds authorized in the Section 1 Addendum of this Act be used to reimburse the following volunteer fire companies Newark Claymont Middletown, Odessa, and Brandywine Hundred for the acquisition of rescue tools Upon submitting the receipts of sale each company will be reimbursed up to \$7,500 by the State Fire Commission - State Fire School (75-02-01.

DELAWARE STATE UNIVERSITY

Section 87. Women's Locker Room/Treatment Facility This facility authorized in the Section 1 Addendum of Volume 70 Chapter 210 Laws of Delaware shall include a weight room within the total cost of the project

DELAWARE TECHNICAL AND COMMUNITY COLLEGE

Section 88 Jason Building Owens Campus. A portion of the funds authorized in the Section 1 Addendum of this Act for Repairs and Renovations to the Jason Building at the Owens Campus shall be used to repair leaking or blocked gas lines to ensure safety of students using laboratories in said building

UNIVERSITY OF DELAWARE

Section 89 University of Delaware - Georgetown Agricultural Substation

The Section 1 Addendum of this Act appropriates \$70,000 to the University of Delaware for the Georgetown Agricultural Substation Of this amount \$40,000 shall be used to meet life safety code requirements and \$30,000 for roof repairs

STATE BOARD OF EDUCATION

Section 90 Appropriation for Architectural Barrier Removal It is the intent of the General Assembly that the sum of One Hundred Sixty Thousand Dollars (\$160,000) appropriated in the Section 1 Addendum of this Act to the State Board of Education be used for the State's sixty percent (60%) share of architectural barrier removal projects as defined in Section 7528 of Title 29 of the Delaware Code Each qualifying school district having approved architectural barrier removal projects shall authorize its forty percent (40%) share No local school district may participate in the use of these funds without first providing its local share pursuant to the provisions of this Section and other pertinent provisions of Delaware law

Section 91 POLYTECH North Campus - Replacement Plan Notwithstanding the provisions of any other State law it is the intent of the Governor and General Assembly that land acquired by the state in 1971 off of Denny's Road in Dover of which approximately 38 acres, as improved is under the control of the POLYTECH School District for providing education shall become part of and under the control of Delaware Technical and Community College Terry Campus for the purpose of providing allied health educational programs upon completion of a replacement facility for POLYTECH'S adult educational program The transfer to Delaware Technical and Community College Terry Campus of the land and improvements known as POLYTECH North Campus shall take effect upon completion and occupancy by POLYTECH School District of an appropriately sized replacement facility at its Woodside Campus The size of such replacement facility shall be determined by the State Board of Education with the understanding that the purpose of this effort is to provide a facility at the Woodside Campus in order to continue adult education courses currently offered by the District at the North Campus Said facility shall not be used to increase the student capacity beyond the current 1,000 pupils It is anticipated that the state will pay 100 percent of the replacement cost, excluding the cost of land previously acquired by the District Nothing in this Section shall be construed as altering any existing ownership interest rental agreements or maintenance responsibilities related to the North facility prior to completion and occupancy of the replacement facility at Woodside

Section 92 Christina Land Acquisition. Funds remaining in the "New Elementary" appropriation (91 95-33-00-6113) shall only be utilized to acquire land north of Newark for a future elementary school.

Section 93 School Construction. Purchase orders and change orders for school construction projects which are coded to a different school construction project line within the applicable school district will be approved upon review and determination by the Department of Public Instruction and State Budget Office that full compliance of Section 2 4 3B(1) and (2) of the State of Delaware School Construction Manual has been met. All such purchase orders or change orders must reference the appropriate projects, lines of authorization and appropriate section of the School Construction Manual.

Section 94. The State Board of Education is authorized to implement the revised school construction formulas for the construction of total new schools. The new formulas shall not be applied to major capital improvement projects involving renovation, modernization and/or additions or in any way justify the construction of additional space in any pre-existing school facility. The revised school construction formula shall provide for a building size not to exceed the following:

Elementary School	360 pupils	14.7%	Larger than current formula
	480	18.5	
	600	11.9	
	720	12.9	
	840	12.0	
Middle School	500	13.5	
	700	12.7	
	1000	9.5	
	1200	9.5	
	1600	9.5	
High School	500	10.3	
	700	8.7	
	1000	5.5	
	1200	5.7	
	1600	5.9	

Section 95. The Section 1 Addendum to this Act appropriates \$394,600 for the lease/purchase of the Hercules Marketing Center on behalf of the Red Clay School District, for the facility known as "Brandywine Springs". Such appropriation shall be funded with 100% State funds per year until such time as the Red Clay School District passes local referendum approving acquisition of Brandywine Springs.

Upon passage of the required referendum, any and all appropriations funded by the State shall be credited to the State's portion of the total cost of acquisition in order to reduce the balance of State funds necessary to acquire the facility.

Notwithstanding any other provision of the Delaware Code to the contrary, any and all property tax obligations associated with this facility are hereby waived while said facility is under lease.

Section 96. Amend Title 29, Chapter 7528 of the Delaware Code by adding the phrase "and stand alone storage buildings" after the word "handicapped" in the second sentence of paragraph (a).

Section 97. Amend Section 1707 (b) (3), Title 14, Delaware Code, by striking said subsection and inserting in lieu thereof the following:

Authorized amount means \$23,250 for Fiscal Year 1997 and as established in the annual State Budget Appropriation Act thereafter.

Section 98. Amend Senate Bill No. 460 of the 138th General Assembly by striking the words "Christina School District" as they appear on page 182, line 10 of said Bill and inserting in lieu thereof the words "the custodial agent to be approved by the Budget Director and the Controller General".

Section 99. Bond Verification All bonds issued, or herein before or herein authorized to be issued, by the State are hereby determined to be within all debt and authorization limits of the State

Section 100. Inconsistency. Insofar as the provisions of this Act are inconsistent with the provisions of any general, special, or local laws, or parts thereof, the provisions of this Act shall be controlling

Section 101 Severability If any section, part, phrase, or provision of this Act or the application thereof be held invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, phrase, provision, or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Act or the application thereof

Section 102. Effective Date. This Act shall take effect in accordance with the provisions of State law

Approved July 10, 1996

**SUMMARY OF CAPITAL AUTHORIZATION NEEDS (\$ X 1000)**

TITLE	ACTIVITY	FUND	TOTAL COST
<b>PROGRAM DEVELOPMENT</b>			
TTF Authorization Needed			\$ 0
FHWA Authorization			1,856
FTA Authorization			316
FRA Authorization			36
FAA			0
Other's			0
<b>SYSTEM PRESERVATION</b>			
BR12B, SR9 Leipsic	R/W, PE	State	65
BR35C on K35 over Ashcut	R/W, Construction	State	406
BR64A Smyrna Landing	Construction	FHWA	1,462
BR78 Mountchain Road	Construction	State	500
BR84B on K84 over Duck Creek	Construction	FHWA	977
BR123A on Straham Lane over King's Causeway Branch	Construction	State	444
BR351 on NJ87A over Muddy Run	R/W, PE	FHWA	366
	Construction	FHWA	350
BR364B on K364	Construction	State	308
BR424, Wiggins Mill Pond	R/W, PE	FHWA	89
BR456 on N45	Construction	State	414
BR576, Washington Street	R/W, Construction	State	10
BR636, Gravelly Branch	R/W, PE	FHWA/State	627
BR698, Van Buren St Br, Wilmington	Construction	State	1,900
BR's 716, 716A, 717 on I-95 over SR7	Construction	FHWA	3,600
BR813 - Painting	PE	State	100
BR's 936 and 937 on S14 over Cabbage Pond	R/W, Construction	State	975
Bridge Inspection & Management (2 year program)	Construction	FHWA	2,200
Bridge Painting Program	Construction	State	500
Dirt Roads - Surface Treatment	Construction	State	1,800
Highway Operations Facilities	PRO/Construction	State	1,175
I-95 Viaduct Painting	PE	State	250
I-95, Wilmington Viaduct to PA Line	PE	FHWA	2,000
Lewis Swing Bridge	Construction	FHWA	1,000
Major Equipment Replacement	Procurement	State	4,500
Materials & Minor Contracts for Infrastructure Preservation	Construction	State	1,200
N209 Grubb Road Naaman's to Sconset Drive	PE	State	200
Other Bridges	PE, Construction	FHWA/State	2,640
Other Projects to be Identified	PE, Construction	State	1,700
Rail Preservation	Construction	State	345
Resurfacings	Construction	State	16,000
Trans Vehicle Repl & Refurb	Procurement	FTA	1,996
TTF Authorization Needed			\$34,026
FHWA Authorization			12,640
FTA Authorization			1,597
FAA Authorization			0
Other's			0

TITLE	ACTIVITY	FUND	TOTAL COST
<b>SYSTEM EXPANSION</b>			
Churchman's Rd & SR7 Int	Construction	FHWA/State	19,600
Ebenezer Church Rd (N324),	Construction	State	5,470
Lancaster Pike (SR48)	PE, Env, Construction	FHWA/State	582
Naaman's Rd E of 202 to US13	PE, R/W, Construction	State	14,645
Other Projects to be Identified	PE, Construction	State	1,000
Other Projects to be Identified	PE, Constructinn	State	3,000
SR1, S of Dover to D & D Canal	R/W, Env, PE, Const	FHWA/State	62,970
SR7, SR72 to Valley Rd	Construction	FHWA	6,750
SR141, Kennett Pike to US202	PE, Const, Env	FHWA	1,750
SR273 Marrow's Rd to Amtrak	R/W	State	300
SR896 US 40 to I-95	Construction	FHWA	600
Sussex Improvements, SR404A	R/W	State	300
Transit - Bus Procurement	Procurement	State	240
Transit Facilities Expansion-Statewide	Construction	State	12,162
Wyoming Rd Extension	PE	FHWA	50
TTF Authorization Needed			\$ 52,034
FHWA Authorization			55,236
FTA Authorization			0
FAA Authorization			0
Other S			0
<b>ENGINEERING AND CONTINGENCIES</b>			\$ 1,000
<b>SUBURBAN ST., DRAINAGE &amp; MISC.</b>			\$ 15,150
<b>MUNICIPAL ST. AID</b>			\$ 3,000
<b>TOTAL CAPITAL (TTF) AUTHORIZATION NEEDED</b>			<b><u>\$111,267</u></b>

TITLE	ACTIVITY	FUND	TOTAL COST
SYSTEM MANAGEMENT			
BR681, on SR9, New Castle Corridor Preservation	R/W, PE	FHWA	115
Elkton, New London Rds. Main St. Improvements	R/W	FHWA/State	3,700
Faulkland Rd	PE	State	50
Henderson Rd & Pike Creek Intersection	R/W, Construction	State	1,125
I-95 at SR141, Interchange	R/W	FHWA	35
I-95, Toll Plaza Rehabilitation Phase II	PE	FHWA	700
Intersection Improvements	Construction	FHWA	2,023
Kennett Pike, N of Buck to S of Brook Valley Rd	PE, Construction	State	125
Non-Motorized Transportation Projects (Bicycle & Pedestrian)	Construction	FHWA	1,375
Other Projects to be Identified	PE, Construction	FHWA	800
Passenger Facilities	PE, Construction	State	1,000
Rail Crossing Safety	Construction	FHWA	550
Rockland Rd & Mt. Lebanon Rd Intersection Improvement	PE, Construction	FHWA/State	725
Safety Improvements	Construction	FHWA	1,250
Salem Church Rd, US40 to Old Balt Pike	Construction	FHWA	1,200
Southwood Rd, Valley Rd Ridon Dr.	R/W/Construction	State	885
SR26, Assawoman Canal to SR1	Construction	State	1,200
SR26, Assawoman Canal to SR1	R/W	State	1,500
SR54, S58C to SR1	PE	FHWA	850
SR72 Milford Crossroads Intersection	Construction	State	1,715
SR273, I-95 to Ogletown	PE	State	363
Sussex County Aviation	R/W/Construction	FAA/ST/County	115
Transit - Bus/Vehicle Equipment	Procurement	State	270
Transportation Enhancements	PE, Construction	FHWA	3,375
US40/SR7 Intersection Improvement	PE, Construction	FHWA/ST/PRI	1,570
US40/SR72 Intersection Improvement	R/W	FHWA	200
Variable Message Signs	Construction	FHWA	1,000
White Oak Rd, US13 to West of SR 1	Construction	State	2,220
Wilm Transit Ctr (Riverview Plaza)	Construction	State	2,275
Wilmington Waterfront	Construction	State	1,300
TTF Authorization Needed			\$ 8,757
Reprogramming (Small Stations)			(2,000)
Net TTF Authorization Needed After Reprogramming			6,757
FHWA Authorization			11,757
FTA Authorization			0
FAA Authorization			104
Other S			350

NORTH DISTRICT HOT MIX PROGRAM				
CT	NAME	ROAD	FROM DESC	THRU DESC
NC	PAPER MILL ROAD	13	1600 FT SOUTH OF PROJECT	PROJECT
NC	CHURCH STREET	50	CHURCH STREET (INTERSECTION)	SPRUCE STREET (INTERSECTION)
NC	ADAMS STREET	505 NB	MARYLAND AVE. RD 336	SECOND STREET
NC	ROUTE 71	35	ROAD 387	NEW HOT MIX (RD 404)
NC	BASIN RD	6NB & SB	RD 55. FERRY CUT OFF	RD 33 SB US 13 & 40
NC	DEL-141	6	INTERSECTION AT COMMONS BLVD	
NC	PLEASANT VALLEY ROAD	8	ROAD 32 U.S 40	ROAD 26 OLD BALTIMORE PIKE
NC	DEL - 4	366	1/4 MILE EAST OF R&R CROSSING	
NC	PURGATORY SWAMP RD	356 SB	BLUE HEN DR	KENSINGTON DRIVE
NC	MARROWS ROAD	351	BROOKSIDE DRIVE	NEWARK CHRISTIANA RD RD 18
NC	CHURCHMANS ROAD	339 E&W	CONTINENTAL DRIVE	OGLETOWN STANTON RD RD358
NC	ROUTE 4	358	ROAD 18	ROAD 336
NC	CHAPMAN ROAD	347	SALEM CHURCH ROAD RD 348	I-95
NC	CENTERVILLE ROAD	333	BOXWOOD ROAD ROAD 334	GREENBANK ROAD ROAD 330
NC	MT CUBA ROAD	261	ROAD 262A PYLES FORD ROAD	ROAD 247 SNUFF MILL ROAD
NC	MONTCHANIN RD	225	A-ST	RD 235A
NC	MT LEBANON RD	227	RD 229. SHARPLY RD	RD 4 SB. CONCORD PIKE
NC	SILVERSIDE ROAD	212	GREENMOUNT ROAD	FOULK ROAD ROAD 203
NC	CARR ROAD	213	1121 CARR ROAD	CLEARVIEW AVENUE
NC	HILLCREST AVE	499	RD. 24 US 13B PHIL PIKE	CHEASTNUT AVE
NC	OLD CAPITOL TRAIL	12	RD 330 GREENBANK ROAD	RD 333 CENTERVILLE ROAD
NC	KING STREET	24	E 16TH ST	RD 237 EB. E FRONT ST
CENTRAL DISTRICT HOT MIX PROGRAM				
CT	NAME	ROAD	FROM DESC	THRU DESC
K	NORTH DUPONT BLVD	1 NB&SB	SMYRNA-LEIPSIC ROAD RD 12	KENT COUNTY LINE
K	DUPONT HWY	24 SB	WALNUT SHADE ROAD RD 30	CANTERBURY ROAD RD 33. DE 15
K	SOUTH DUPONT HWY	5 SB	CANTERBURY ROAD RD 33	PLYMOUTH ROAD RD 239 / RD 371
K	SOUTH DUPONT HWY	5 SB	REEVES ROAD RD 286	MILFORD HARRINGTON HWY RD 36
K	SOUTH DUPONT HWY	5 NB	JOHNNY CAKE ROAD RD 34 DEL 12	CANTERBURY ROAD RD 33 DE 15
K	NORTH DUPONT HWY	2 NB	NICHOL'S INTER RD 88	DENNEYS ROAD RD 100
K	NORTH DUPONT HWY	2 SB	DENNEYS ROAD RD 100	RD 3 STATE ST
NC	DUPONT HWY	1 NB	CROSSOVER AT TRUCK PARTS	FIELDSBORO ODESSA ROAD RD 441
NC	SOUTH DUPONT HIGHWAY	1 SB	BRIDGE 393B	RD 38
NC	DUPONT PKWY	1 NB	H & H CORNER ROAD 14	LEE'S CHAPEL ROAD RD 455

Page 1

NC	DUPONT PKWY	1 NB	RAMP TO ROAD 80	BLACK DIAMOND ROAD RD 469
K	WILLOW GROVE RD	53	DRAPERS MILL ROAD RD 255A	WILLOW TREE CIRCLE RD 228A
K	BAYSIDE DR	15	LITTLE CREEK ROAD RD 16	WHITEOAK ROAD RD 66
K	BAYSIDE DR	15	LEIPSIC ROAD RD 334	SMYRNA-LEIPSIC ROAD RD 12
K	KILLENS POND ROAD	384	BLOOMFIELD DR RD 396	CARPENTER BRIDGE ROAD RD 35
SOUTH DISTRICT HOT MIX PROGRAM				
CT	NAME	ROAD	FROM DESC	THRU DESC
S	DEL-1	14 NB	DEL-16 ROAD 16	ROAD 224
S	U S 13	2 NB&SB	U S 9 ROAD 28	ROAD 20 DEL-20
S		382	ROAD 54	1,500 FT NORTH OF ROAD 54
S	DEL-24	24 EB&WB	U S 113 ROAD 113	BRIDGE
S	DEL-16	16	ROAD 16C	NEW HOT MIX WEST OF ROAD 36
S	DEL 1A	15	ROAD 14 N B	BRIDGE
S		277	DEL 24 ROAD 24	ROAD 277A
S	DEL-17	52	DEL-54 ROAD 58	SELBYVILLE LIMITS
S		88	ROAD 257	ROAD 258
CENTRAL DISTRICT SURFACE TREATMENT PROGRAM				
CT	NAME	ROAD	FROM DESC	THRU DESC
K		419	120	121
K		300	111	60
K		299	455	60
K		283	57	285
K		290	289	HRTL
K		311	314	114
K		291	59	MDLN
K		296	291	298
K		297	296	60
K		438	116	439
K		282	281	284
K		429	384	116
K		436	429	384
K		401	400	407
K		426	5	35
K		427	426	35
K		399	398	388

Page 2

K	396	384	36
K	395	36	388
K	115	114	309
K	201	103	50
K	103	73	50
K	208A	208	53
K	207	208	MDLN
K	206	MDLN	208
K	209	206	208
K	218	219	215
K	217	103	206
K	267	266	268
K	268	57	110
K	256	110	53
K	255	110	53
K	255A	MDLN	53
K	252	253	251
K	253	56	53
K	240A	54	END
K	246	108	53
K	109	108	235
K	77	109	NHMX
K	235	109	53
K	236	240	235
K	83	11	325
K	323	9	11
K	338	15	END
K	339	15	END
K	88	334	331
K	151	102	END
K	139	91	94
K	95	96	39
K	174	46	98
K	172	49	171
K	183	50	END
K	184	50	47
K	186	185	187

Page 3

K	187	50	184
K	188	50	186
K	161	162	158
NC	490	30	45
NC	440	439	END
NC	464	440	END
NC	426	15	END
NC	445	62	10
NC	476	MDLN	47
NC	462	47	463
NC	42	25	10
NC	459	10	458

SOUTH DISTRICT SURFACE TREATMENT PROGRAM				
CT	NAME	ROAD	FROM DESC	THRU DESC
S		62	427	24
S		414	427	26
S		427	422	64
S		432	472	433
S		437	62	62
S		446	466	473
S		485A	13	2
S		488	2	481
S		488	485A	489
S		495	494	492
S		497	24	495
S		500	498	493
S		77	MDLN	538
S		522	18	527
S		533	531	18
S		538	MDLN	541
S		540	538	79
S		541	536	21
S		542	536	80
S		548	549	552
S		552	21	553
S		553	21	553A

Page 4

S	553A	553	557
S	565	40	605
S	586	34B	KTLN
S	22A	16	22
S	22B	16	22
S	38	14	39
S	201	36	END
S	202	36	201
S	208	206	36
S	213	207	211
S	214	215	207
S	238	239	240
S	239	565	238
S	250	319	197
S	614	613	44
S	621	207	36
S	624	224	42
S	632	611	36
S	635	42	621
S	641	113	16
S	281	285	18
S	277A	277	24
S	277B	277	END
S	285A	285	277
S	296	48	47
S	296A	47	292A
S	298	24	22
S	301	302	24
S	302	22	48
S	304	24	297
S	312A	312	24
S	313A	310A	313
S	315	47	48
S	316	315	317
S	318	326	86
S	319	GTTL	18
S	321	48	113

Page 5

S	322	431	432	
S	323	113	321	
S	326	20	328	
S	446	444A	522A	
S	446	520	28	
S	471	431	432	
S	483	20	484	
S	484	20	483	
S	518	62	469	
S	58B	58	END	
S	83	334	MBTL	
S	341A	342	341	
S	344	342	26	
S	347	26	346	
S	364	364A	END	
S	365	84	52	
S	370	52	84	
S	406	402	113	
S	412	410	433	
S	412A	472	412	
S	415	419	413	
S	415A	419	26	
S	426	26	413	
S	433	432	20	
			SUB TOTAL: \$	15,600,000
			PATCHING (NORTH): \$	400,000
			GRAND TOTAL: \$	16,000,000

Page 6

S	553A	553	557
S	565	40	605
S	586	34B	KTLN
S	22A	16	22
S	22B	16	22
S	38	14	39
S	201	36	END
S	202	36	201
S	208	206	36
S	213	207	211
S	214	215	207
S	238	239	240
S	239	565	238
S	250	319	197
S	614	613	44
S	621	207	36
S	624	224	42
S	632	611	36
S	635	42	621
S	641	113	16
S	261	285	18
S	277A	277	24
S	277B	277	END
S	285A	285	277
S	296	48	47
S	296A	47	292A
S	298	24	22
S	301	302	24
S	302	22	48
S	304	24	297
S	312A	312	24
S	313A	310A	313
S	315	47	48
S	316	315	317
S	318	326	86
S	319	GTTL	18
S	321	48	113

Page 5

S	322	431	432	
S	323	113	321	
S	326	20	328	
S	446	444A	522A	
S	446	520	28	
S	471	431	432	
S	483	20	484	
S	484	20	483	
S	518	62	469	
S	58B	58	END	
S	83	334	MBTL	
S	341A	342	341	
S	344	342	26	
S	347	26	346	
S	364	364A	END	
S	365	84	52	
S	370	52	84	
S	406	402	113	
S	412	410	433	
S	412A	472	412	
S	415	419	413	
S	415A	419	26	
S	426	26	413	
S	433	432	20	
			SUB TOTAL: \$	15,600,000
			PATCHING (NORTH) \$	400,000
			GRAND TOTAL: \$	16,000,000

Page 6

Suburban Streets Program

Albion - Baird Street from end to end	97-425	17,875
Albion - Cunningham Drive from end to end	97-426	21,250
Backwater Village - Mohican Dr. , Creek Rd. and Pocahontas Rd.	96-409	7,500
Banks Acres - Pine Street, Oak Street and Gum Circle	97-246	68,750
Beech Hill - altonwood Drive from North Star Road to end	97-595	6,250
Benge Road from Meeting House Road to Old Public Road	97-300	69,250
Birchwood Park - Gerald Dr. from Birchwood Dr. to SR 273	97-473	141,400
Bon Ayre - Clover Drive from Old Wilmington Road to Cliderbrook Road	94-314	17,000
Brookfield - Deborah Way from Brookfield Dr. to Brookfield Dr.	97-404	26,250
Brookside Park - Carlin Lane from Chaucer to Carlisle	96-036	20,800
Brookside Park - Kenmar from S. Chapel to Kenmar	96-043	161,000
Camden - William Street from East Street to dead end	97-532	20,000
Caravel Farms - Anna Ave. from Kimmie Court to Donna Dr.	97-463	43,750
Caravel Farms - Debra Dr. from Mable St. to cul-de-sac	97-462	23,630
Caravel Farms - Donna Dr. from Ann Ave. to Debra Dr.	97-461	15,250
Carter development - Asbury Avenue from US 13 to Howell Street	96-357	51,000
Castle Hills - Tavernier Road from Roxeter Road to Hardor Avenue	97-543	26,875
Cedarcrest - E. Paris Ct. from E. Paris Dr. to cul-de-sac	97-437	13,750
Chalfonte - Berwyn Road from Landon Drive to Barlow Road	94-275	88,400
Cooper Farms - Locust Road from Duncan Road to end	97-257	15,300
Cranston Heights - Clayton Ave. from Marshall Ave. to Newport Gap	97-050	41,200
Darley Woods - Jeffrey Road from house #1011 to house #1008	97-124	6,250
Dunleith - Talladega Dr. from Oakmont to Hastle	96-590	31,200
Duross Heights - Allegretto from Airport Rd. to Strawbride Ave.	96-419	16,250
Edenridge - Conison Rd. from Berwick Rd. to Hynnyrd Rd.	97-289	28,450
Elmwood II - Robert Oaks Dr. from existing sidewalk to sidewalk	97-183	2,900
Elmwood/Sherwood Forest - Regal Blvd. from existing sidewalk	97-184	10,250
Estates of Corner Ketch - Union Station Rd. from Kingsbury to Hylle	97-594	25,000
Estates of Corner Ketch - Meadowbrook Lane	97-593	7,875
Estates of Corner Ketch - Meadowbrook from Wothington to cul-de-sac	97-431	12,100
Foxmeadow Farm - Belmont Drive from end to end	96-276	65,000
Glasgo Pines - Berwick Court from Oufferin Drive to end	94-385	9,100
Glasgow Pines - Whitburn Place from Ashkirk Dr. to Ashkirk Dr.	97-262	31,500
Glenville - E. Netherfield from Tolliver Dr. to Netherfield Rd.	97-423	28,625
Glenville - Netherfield Road from Havreson Place to Tolliver Drive	97-422	60,625
Granville Road from Limestone Hills to Upper Pike Creek Road	97-553	21,750
Green Bridge - Carnegie Court from Green Bridge Road to Circle	95-033	31,200
Greenview - Clearview Drive from Riley Drive to Greenview Drive	97-248	47,700
Hampton Green II - Pell Street from Deen Street to Bayus St.	97-367	9,100
Hampton Green II - Revelle Street from Nilson Court to end	97-366	21,200
Hampton Green II - Baylis St. from Revelle St. to Hilton Blvd.	97-368	17,500
Harbor Estates - Clark Circle from Reybold Rd. to Warfel Dr.	94-480	62,400
Harbor Estates - Cleaver Rd. from Reybold Rd. to Warfel Rd.	94-481	29,900
Highland Woods - Big Oak Lane from Ravine Road to Mill Race Road	95-516	10,400
Highland Woods - Ravine Road from Farm Ave.	94-329	24,700
Hillside Acres - Appalachian Drive from Winfred Drive to Vineyard	97-058	11,000
Hillside Acres - Vineyard Lane from Winfred Drive to Appalachian	97-057	16,750
Hillside Acres - Vinfred Drive from Road K380 to end	97-059	22,050
Hillside Heights - Grayrock Rd. from Greentree to Brownleaf	97-579	25,500
Hillside Heights - Yellowstone Dr from Brownleaf to Grass Rock	97-580	25,875
Hillstream II - Aubrey Lane from Hillstream Road to end	96-458	12,500
Hillstream II - Hillstream Road to cul-de-sac	96-460	8,400
I-95 toll plaza wooden fence	97-387	10,000
Keen-Wik - Walnut Lane from Cedar Road to end	97-477	10,000
Klair Estates - Sharon Dr. from Verona Dr. to Sandy Dr.	96-386	36,200
Lancashire - Inwood Drive in front of house #2214	97-063	1,900
Lancashire - Inwood Road from Lakewood Drive	96-358	7,300
Liftwood - Almond Road in front and side of house #101	97-197	2,750
Limestone Acres - Pickwick Dr. from Springers Lane to Limestone Rd.	94-416	76,700
Limestone Acres - Saxon Circle from Springer Lane to end	96-299	6,850
Limestone Gardens - Nicholby Road from Griffin Drive to Pickwick Dr	97-281	13,750
Limestone Gardens - Nicholby Rd. from Cratchett to Pickwick	97-282	15,600
Limestone Gardens - Nicholby Rd. from Pickwick to Cratchett	97-284	31,000
Limestone Hills - Belmont Drive from Saratoga Drive to #1 Belmont	97-599	24,250
Limestone Hills - Gregg Drive at house #120 and house #134	97-596	22,250
Limestone Hills - Kinglet Court from Middleton Drive to end	97-597	7,250
Limestone Hills - Sparrow Court from Middleton Drive to end	97-598	11,250
Llangollen Estates- Schafer Boulevard from US 13 to end	97-481	85,000
Longview Farms - Lawndale Road from Merrilbrook Road to Rockwell Rd.	97-559	23,250
Longwood - North Lori Lane from Wilmont Drive to Sweetbriar Road	96-219	57,200
Marshallton - Jackson Ave. from Greenbank Rd. to end	97-280	27,750

Marshallton Heights 2 - Woodland Ave. from Chestnut to Delaware	97-278	28,100
Newark - Prestwick Farms - Elm Avenue from Woodlawn to Stafford	97-329	32,000
Newport Heights - Larch Avenue from house #102 to house #108	97-557	2,750
North Bowers Beach - Canal Street from Hyatt Street to Hubbard Ave	97-313	3,250
North Bowers Beach - Hyatt Street from Main Street to end	97-312	28,100
North Crest - Walter Drive from Hrexham Road to Marsh Road	95-503	76,700
Oak Orchard - Palmateer Development - Basin, Fagan, Cannon & Paul	97-530	71,500
Penn Acres - Flithian Dr. from E. Roosevelt Ave. to Morrison Rd.	96-479	41,200
Penn Drew Manor - Glen Avon Rd from St. James to St James	97-408	11,450
Penn Drew Manor-St. James St. from Old Capitol Trail to Old Capitol	97-407	61,200
Pigeon Run - Pigeon Run Drive from SR 7 to new hot mix at house #18	97-397	80,900
Pigeon Run - Pigeon Run Drive from house #126 to House #128	97-396	1,400
Red Mill Farms - Bisbee Court from Bisbee Road to circle	97-077	7,300
Red Mill Farms - Bisbee Rd. from Andries Dr to Cordela Rd	97-078	72,500
Red Mill Farms - Dunbar Rd. from Cordele Rd. to Fairway Rd.	97-080	28,700
Road 103 from Road 47 to Road 182	96-412	82,500
Road K234 (Bison Rd.) from Road K125 (Dundee Rd.) to railroad track	97-386	70,900
Road K4 (US 13-A) entrance to proposed Nellie Hughes Elem. School	96-416	61,200
Road N30 - (south side) west of N469/N45 intersection	97-475	26,300
Road N483 from Road N40 to Kent County line	95-050	86,500
Road S534 drainage from US 13 to US Road S546 (13A)	96-184	20,250
Rogers Manor - Adair Avenue from Meadow Lane to New Castle Avenue	97-544	33,875
Royal Grant - Duchess Circle from Royal Grant Way to cul-de-sac	97-384	10,600
Royal Grant - Lordship Lane from Royal Grant Way to newer hot mix	97-385	4,250
Royal Grant - Lordship Lane in front of house #10	97-383	2,500
Royal Grant - Royal Grant Way from Lebanon Rd. to Rising Sun Rd.	97-254	71,700
Salem Hoods - Alvin Drive from Estes Court to Tinsley Court	97-565	37,625
Salem Hoods - Estes court from end to end	97-566	33,875
Scottfield - Linfield Dr. from Scottfield to Oakfield	96-258	45,000
Scottfield - Deerfield Rd. from Broadfield Rd. to Scottfield Dr	97-401	36,070
Scottfield - Warfield Drive from Scottfield Drive to Broadfield Dr	97-400	25,250
Sharply - Haverhill Rd. from Sharply Rd. to Brockton Rd.	95-491	49,400
Sharply - Walden Road from Ashford Road to Haverhill Road	94-122	41,600
Sheridan Square - Griffin Dr. from Route 7 to Dombey Dr.	95-098	33,800
Sherwood Forest - Regal Boulevard from Chapman Rd to Stature Dr	97-465	31,250
ShIPLEY Farms - Pheasant Run Drive from Shipley Road to end	97-146	21,250
Silview - Woodbine Ave. from Kentucky Ave. to Westmont Ave	97-276	25,600
Skyline Drive (east side) from Linden Hill Elem. to Pike C. Prof	96-175	67,100
Skyline Drive median sidewalk at entrance of Pike Creek Shopping Ct	97-194	550
Skyline Ridge - E. Timberview Court from Videre Drive to end	97-360	57,500
South Graylyn Crest - Faun Rd. from Graywell Rd. to end	94-135	39,000
South Graylyn Crest - Jay Bee Rd. from Faun Rd. to Wils-on Rd	94-136	29,900
Southwood - Live Oak Court from Slapshine Circle to end	96-391	17,500
Stanton Crest - Medary Street from E. Netherfield to Netherfield	97-277	18,750
Stanton Crest - W. Netherfield from Netherfield to Harberson Place	97-274	35,700
Tallybrook - Summerset Road from Shipley Road to end	97-299	41,350
Tavistock - Fox Dale Road from Killbrun Road to Hertford Road	96-294	52,500
Taylortowne - Burns Way from Taylor Road to end	97-537	25,375
Tenby Chase - Tenby Chase turn	97-554	14,125
The Pines of Pike Creek Valley - Foxcroft & Skyline Dr intersection	97-457	1,250
Thompson Station Road (N53) from SR #2 to .4 mile south	96-281	15,000
Timber farms landscaping	97-570	9,600
US 13 south of Road S20	95-145	1,442
Wellington Hills - Arthur Drive in front of house #7	96-381	2,800
West Dennis Road	94-459	1,700
Westbrite Court - Westbrite Court from Ebright Road to end	97-225	27,500
Wilmington Manor - East Van Buren Ave. from Stahl Ave. to US 13	95-470	39,000
Wilmington Manor East - E. Franklin from US 13 to Stahl Ave.	97-432	17,650
Wilmington Manor Gardens - Hood Ave. from Univ. Ave to Notre Dame	95-199	13,000
Woodland Park - Woodbury Court from Glenwood Road to end	97-535	10,375
Woodbridge - Jupiter Road from house #201 to circle	95-085	62,400
Woodland Gallery Road from Wagoner Drive to Wagoner Drive	97-552	39,375
Woodland - Colby Ave. from Alcott to Balfour	94-102	36,400
Wooding - Old North Rd. sidewalk from Blair Court ent to Post Off	97-345	26,400
Caravel Farms - Anna Ave. from Oonna Dr. to Donna Dr	97-464	11,000
Castle Hills - Castle Hills Drive from SR 9 to existing sidewalk	97-456	5,000
Clayton - Main Street fire signal	97-218	8,853
Collins Park - Atlas Drive from end to end	97-351	26,300
Collins Park - Bellanca Lane from Riverview Road to Rodney	97-546	48,000

Collins Park - Buck Lane from Delaware Avenue to Rodney Drive	97-547	22,000
Edgemoor Terrace - H. Sallsbury Dr. from Denny to S. Stuyvesant	96-234	32,500
Edgewood Hills - Grandview Ave. from Lore Ave. to River Rd.	97-427	9,125
Edgewood Hills - Short Hill Road from Marsh Road to Edgewood Rd.	95-554	4,550
Glasgow Pines - Stewart Court from Thornhill Drive to end	96-253	12,500
Greenwood drainage	96-558	16,050
Hampton Green II - Deen St. from Revelle St. to Hilton Blvd.	97-369	8,200
Hilltop Manor - Mullin Road from Virginia Road to Philadelphia Pike	97-188	10,000
Jefferson Farms - Michle Rd. from Independence S. to Independence N	97-076	54,142
Liftwood Estates - Cranbrook Drive from end to end	97-358	28,300
Linamere - all streets, various locations	96-280	18,750
NCCD - Foulwoods drainage study	97-119	2,500
Overview Gardens - Aquilla from Briarcliff to Lloyd	96-503	46,450
Road S267 (Gills Neck Road) from Road S268 to 1.1 mile	96-225	76,000
Road S356 - Road S536 from Road S539 to bridge	95-415	30,550
Sherwood Park #2 - Ipswich Dr. from Pecksniff Dr. to Pecksniff Dr.	96-395	29,350
Southwood - Slapshire Circle from house #19 to end	96-392	16,850
Star Hill Rd - sidewalk from Star Hill Elem. to Lingo Drive	97-420	75,000
Taylorstowne - Songsmith Dr. from Penman Dr. to Honeysuckle Dr.	95-432	17,350
Weldin Park - William Penn Ln. from Weldin Rd. to Weldin Park Dr.	94-257	16,250
Westgate Farms - Oldbury Dr.	96-221	50,000
Woodhill Townhouses off Shipley Road	96-965	2,000

01st Representative District	97-701	250,000
02nd Representative District	97-702	250,000
03rd Representative District	97-703	250,000
04th Representative District	97-704	36,400
05th Representative District	97-705	250,000
06th Representative District	97-706	56,775
07th Representative District	97-707	107,550
08th Representative District	97-708	250,000
09th Representative District	97-709	163,500
10th Representative District	97-710	15,700
11th Representative District	97-711	171,025
12th Representative District	97-712	87,250
13th Representative District	97-713	250,000
14th Representative District	97-714	74,125
15th Representative District	97-715	164,437
16th Representative District	97-716	92,950
17th Representative District	97-717	23,983
18th Representative District	97-718	245,438
19th Representative District	97-719	28,225
21st Representative District	97-721	47,294
22nd Representative District	97-722	61,582
23rd Representative District	97-723	238,300
24th Representative District	97-724	184,450
25th Representative District	97-725	134,100
26th Representative District	97-726	26,687
27th Representative District	97-727	203,185
28th Representative District	97-728	214,847
29th Representative District	97-729	152,812
30th Representative District	97-730	250,000
31st Representative District	97-731	250,000
32nd Representative District	97-732	250,000
33rd Representative District	97-733	200,200
34th Representative District	97-734	3,925
35th Representative District	97-735	223,950
36th Representative District	97-736	240,000
38th Representative District	97-738	11,250
39th Representative District	97-739	9,658
40th Representative District	97-740	250,000
41st Representative District	97-741	250,000
01st Senatorial District	97-801	250,000
02nd Senatorial District	97-802	47,000
03rd Senatorial District	97-803	250,000
04th Senatorial District	97-804	240,500
05th Senatorial District	97-805	25,375
07th Senatorial District	97-807	148,000
08th Senatorial District	97-808	40,475
09th Senatorial District	97-809	62,838

10th Senatorial District	97-810	179,050
11th Senatorial District	97-811	13,238
12th Senatorial District	97-812	29,860
13th Senatorial District	97-813	99,504
14th Senatorial District	97-814	203,850
15th Senatorial District	97-815	118,363
16th Senatorial District	97-816	27,575
17th Senatorial District	97-817	250,000
18th Senatorial District	97-818	108,000
19th Senatorial District	97-819	250,000
20th Senatorial District	97-820	5,000
21st Senatorial District	97-821	45,000
38th Representative District - OHREC signs	97-948	5,000
Annex West	97-903	15,000
Arden - various streets	97-924	6,000
Ardencroft - various streets	97-926	3,000
Ardentown - various streets	97-925	3,000
Bella Vista - Da Vinci Court from Dantes Drive to end	97-604	12,250
Bella Vista - Galileo Court from Dantes Road to end	97-605	10,125
Bella Vista - Raphael Road from new hot mix to cul-de-sac	97-606	8,500
Bethany Beach	97-944	30,000
Cape Henlopen bike path	97-975	10,000
Cape Henlopen bike trail	97-955	25,000
City of Lewes	97-951	50,000
City of Lewes - streets, sidewalks and curbs	97-963	50,000
City of Milford - King's Highway	97-964	25,000
City of Milford - Peal Alley	97-965	19,000
City of New Castle	97-929	27,071
City of Rehoboth Beach	97-950	30,000
Colonial Acres	97-931	40,000
Dartmouth Woods - Ramblewood Dr. from Dartmouth Woods to Cayuga Rd.	97-636	12,250
Dewey Beach	97-953	10,000
Drummond Ridge - Chadd Rd. from Dewalt Rd. to end	97-643	20,500
Drummond Ridge - Martine Court from Dewalt Rd. to end	97-644	20,375
Dupont Road	97-910	12,000
Duross Heights - Prosperity Road from Betts Ave. to Donn Ave.	97-658	8,375
Eastburn Acres - Anne Place from Alex Road to end	97-662	18,125
Estates of Corner Ketch - Meadowbrook Lane	97-942	7,942
Fenwick Island	97-943	30,000
Garden Club of Wilmington - Rodney Square Project - sidewalks	97-958	20,000
Gravers Lane drainage study	97-923	50,000
Greenways - Bellevue Park roads and trails	97-914	7,500
Greenways - Seaford - walks and paths	97-976	25,000
Greenways - Statewide	97-913	10,000
Greenways - University of Delaware	97-921	13,000
Greenways - Volpe/Bellevue	97-912	15,000
Hampton drainage	97-922	20,000
Henlopen Acres	97-952	75,000
Hickory Tree Housing - landscaping DSHS	97-947	5,000
Jamestown - Pierson Court from Ritchie Drive to end	97-657	9,125
Kalmar Nyckel - Greenways	97-957	30,000
Kirkwood Gardens - Farrand Dr. from Kirkwood Hwy. to Hammond Rd.	97-676	12,000
Lake Shores	97-905	70,000
Lewes Volunteer Fire Company - optics and switches	97-992	22,000
Lewes to Rehoboth bike trail via Cape Henlopen State Park	97-962	10,000
Limestone Hills - Lark Court from Middleton Drive to end	97-601	5,125
Meetinghouse Hill - Hewside Court from Rancin Rd. to end	97-641	19,750
Meetinghouse Hill - Vantage Court from Boyd's Valley to end	97-640	12,310
Mendall Avenue - speed humps	97-928	2,800
Mendenhall Village - Loch Meade Circle from Woodridge Drive to end	97-613	6,625
Mendenhall Village - Village Dr. from Stockbridge to west of Signal	97-683	18,600
Mendenhall Village - Winding Hill Drive from house #16 to #18	97-612	11,375
Mendenhall Village-Stock Bridge Rd. from Briar Creek Rd. to Village	97-611	9,500
NCCD - Augustine Cutoff and School Road	97-949	19,000
NCCD - Chepelcroft drainage	97-908	12,000
NCCD - Garrett Drive drainage	97-916	15,000
NCCD - west side of Valley Road	97-919	23,400
NCCD Drainage - Palm Springs Manor	97-918	11,250
NCCD River Road - Brezza project	97-915	6,500
Quail Ridge - Bernard Drive from house #22 to house #42	97-608	11,125
Quail Ridge - Paddington Court	97-610	875
Quail Ridge - Waterloo Court from Bernard Boulevard to end	97-609	6,000

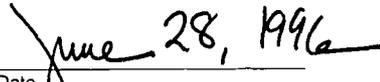
Road 126 (Hollets Corner Rd) - Rd 39 (Rte 6) to past Rd 127	97-623	109,875
Seaford - Silas Road	97-978	50,000
Seaford - downtown streets	97-979	50,000
Selbyville - Main Street	97-946	30,000
Sherwood Park II - Highgate Road at house #1209	97-614	500
South Bethany	97-945	20,000
Southwest Wilmington - streetscape improvements	97-937	38,000
Southwood - Slashpine Circle	97-615	38,000
Sterling Avenue - speed humps	97-927	2,800
Tavistock - Kilburn Rd. from Westcliff Rd. to Burnley Rd.	97-637	22,750
The Highlands - E. Riding from Highlands Lane to E. Dickinson Dr.	97-990	21,563
Town of Bethany Beach	97-968	40,000
Town of Delmar	97-980	40,000
Town of Dewey Beach	97-967	20,000
Town of Fenwick	97-973	30,000
Town of Frankford	97-970	20,000
Town of Laurel	97-981	40,000
Town of Millsboro	97-971	25,000
Town of Rehoboth Beach	97-972	40,000
Town of Selbyville	97-969	20,000
Trinity Vicinity - streetscape improvements	97-936	15,000
University of Delaware - Clayton Hall entrance	97-991	4,813
University of Delaware - East Visitors Lot	97-959	4,000
University of Delaware - East Visitors lot	97-930	25,000
University of Delaware - Georgetown campus	97-906	30,000
University of Delaware - Goodstay Garden Greenways	97-933	10,000
University of Delaware - Goodstay Gardens Greenways	97-956	4,000
University of Delaware - Morrillow Hall Drive - Phase II	97-920	50,000
Villa Drive drainage	97-911	15,000
Virginia Avenue	97-977	50,000
Westover Hills - Berkeley Road to Stuart Road	97-935	38,000
Westover Hills - Dickinson and Essex Roads - drainage improvements	97-932	11,600
Westover Hills - Dupont Road - @.17 miles west of Kennett Pike	97-934	18,000
Westover Hills - street tree improvements	97-941	10,000
Wilmington - 10th and Broom/Franklin - sidewalk repairs	97-966	130,000
Wilmington - Gibraltar	97-939	30,000
Wilmington - Italian Hill streetscape improvements	97-938	28,000
Wilmington - Rodney Square	97-940	15,000
Wilmington - Trinity Vicinity streetscape	97-961	15,000

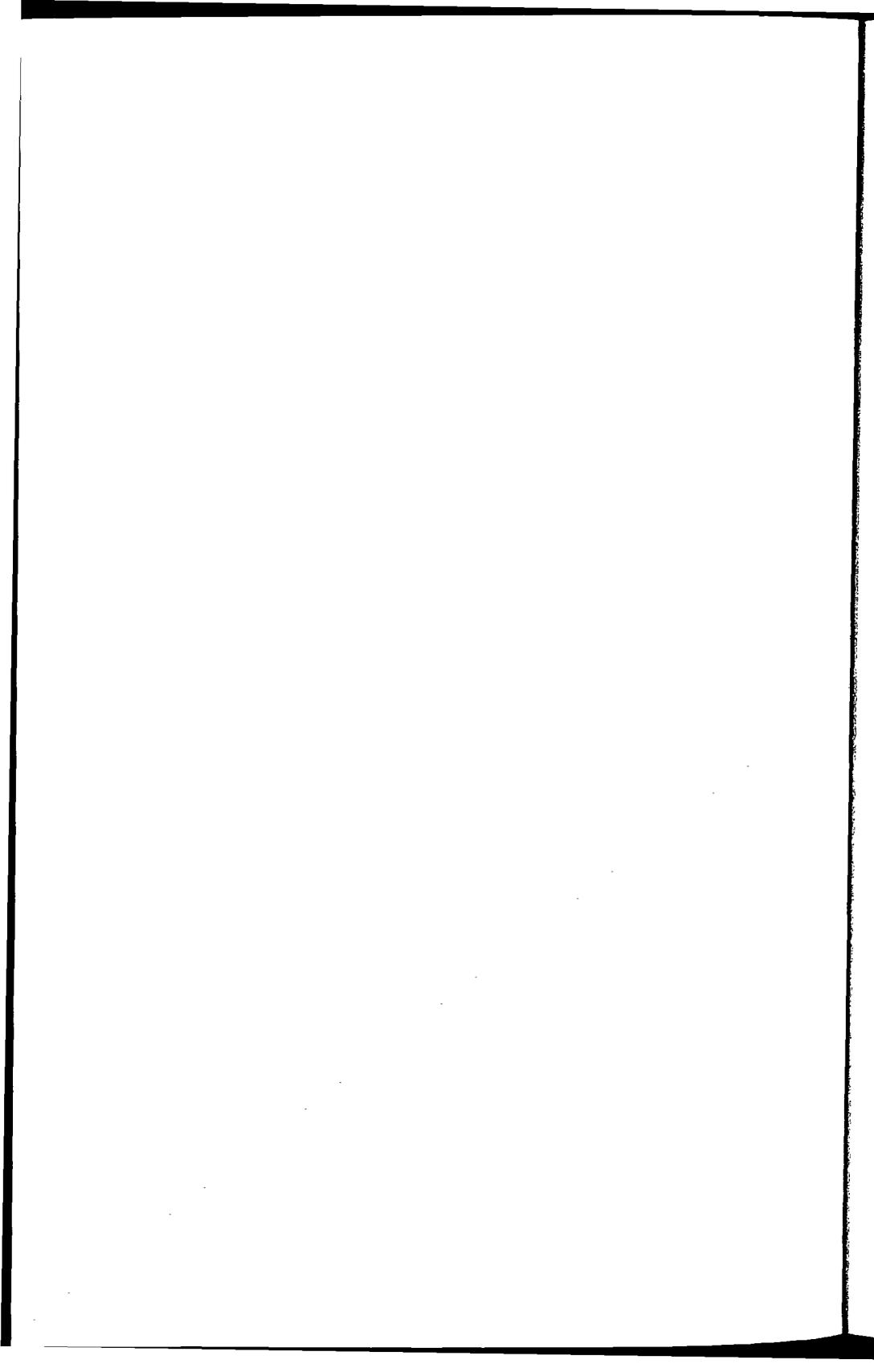
Office of Secretary of Finance  
Debt Limit Statement Dated June 30, 1996

This Debt Limit Statement to be attached to H B 700  
as required by Section 7422, Title 29, Delaware Code

(1) Estimated Net General Fund revenue for the fiscal year ending June 30, 1997 as per the joint resolution of the House and Senate and signed by the Governor in connection with the adoption of the annual Budget Appropriation Bill for that fiscal year	\$ 1,723,900,000
(2) Multiply by 5%	x <u>05</u>
(3) Maximum aggregate principal amount of tax-supported obligations which may be authorized by the State in the fiscal year ending June 30, 1997	\$ <u>86,195,000</u>
(4) Less Aggregate principal amount of previously authorized tax-supported obligations subject to debt limit	\$ <u>0</u>
(5) AVAILABLE DEBT LIMIT prior to appended legislation (3-4)	\$ <u>86,195,000</u>
(6) Less Aggregate principal amount of new tax-supported obligations subject to debt limit to be authorized pursuant to appended legislation	\$ <u>86,190,000</u>
(7) REMAINING DEBT LIMIT (5-6)	\$ <u>5,000</u>

  
Secretary of Finance

  
Date



CHAPTER 474

FORMERLY

SENATE BILL NO. 323

AS AMENDED BY SENATE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND CHAPTER 41, TITLE 21 OF THE DELAWARE CODE RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 4177(c), Title 21 of the Delaware Code by adding a new paragraph "(7)" thereto to read as follows:

"(7) 'Drug' shall include any substance or preparation defined as such by Title 11 or Title 16 of this Code or which has been placed in the schedules of controlled substances pursuant to Chapter 47 or Title 16 of this Code. 'Drug' shall also include any substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, exhilaration, stupefaction or lethargy or for the purpose of dulling the brain or nervous system."

Approved July 10, 1996

## CHAPTER 475

## FORMERLY

SENATE BILL NO. 333  
 AS AMENDED BY SENATE AMENDMENT NOS. 3 AND 4 AND  
 HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 5, TITLE 11 OF THE DELAWARE CODE RELATING TO  
 CRIMES RELATING TO TELECOMMUNICATION SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
 DELAWARE (Two-thirds of all members elected to each house thereof concurring  
 therein):

Section 1. Amend §850, Subchapter III, Chapter 5, Title 11, Delaware Code, by striking  
 said section in its entirety and substituting in lieu thereof the following:

"§850. Possession of or Dealing in a Device for Unlawfully Taking  
 Telecommunication Services; Unclassified Misdemeanor or Class G  
 Felony.

(a) A person is guilty of possession of or dealing in a device for unlawfully taking  
 telecommunication services if the person, under circumstances evidencing an intent to use or  
 employ such device, or to allow the same to be used or employed, with the intent specified in §  
 841 of this title, or knowing or having reason to believe that the same is intended to be so used.

(1) makes, possesses, distributes, uses, assembles, sells, advertises for sale,  
 transfers or gives any unlawful telecommunications device or modifies, alters, programs  
 or reprograms a telecommunications device designed, adapted or which can be used:

(i) For the commission of an unlawful taking of telecommunication  
 service or to acquire or facilitate the unlawful acquisition of telecommunication service;  
 or

(ii) To conceal from any telecommunication service provider, or from any  
 lawful authority, the existence or place of origin or destination, or the originating and  
 receiving telephone numbers, of any telecommunication under circumstances evincing an  
 intent to use the same in the commission of any offense.

(2) sells, possesses, distributes, gives or otherwise transfers to another or offers,  
 promotes or advertises for sale any:

(i) unlawful telecommunication device, or plans or instructions for  
 manufacturing, making or assembly the same; or

(ii) material, including hardware, cables, tools, data, computer software or  
 other information or equipment, knowing that the purchaser or a third person intends to  
 use the material in the manufacture of an unlawful telecommunication device.

Possession of or dealing in a device for unlawfully taking telecommunication  
 services is an unclassified misdemeanor with a sentence up to one year incarceration at  
 Level V and such fine up to \$10,000.00, restitution or other conditions as the Court  
 deems appropriate; provided, however, if the offense involves the sale, manufacture or  
 distribution of five or more unlawful telecommunication devices or the person  
 knowingly possesses five or more unlawful telecommunication devices, he shall be  
 guilty of a Class G felony.

(b) Restitution. The court may, in addition to any other sentence authorized by law,  
 sentence a person convicted of violating this section to make restitution in the manner provided  
 in Section 4106 of this title.

(c) **Civil Action.** A telecommunication service provider aggrieved by a violation of this section may, in a civil action in any court of competent jurisdiction, obtain appropriate relief, including preliminary and other equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expenses, costs of suit and attorney fees.

(d) **Definitions.** As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

(1) **"Manufacture of an unlawful telecommunication device."** To produce or assemble an unlawful telecommunication device or to modify, alter, program or reprogram a telecommunication device to be capable of unlawfully acquiring or facilitating the acquisition of telecommunication service.

(2) **"Telecommunication device."** Any type of instrument, device, machine or equipment which is capable of transmitting or receiving telephonic, electronic or radio communications, or any part of such instrument, device, machine or equipment, or any computer circuit, computer chip, electronic mechanism or other component which is capable of facilitating the transmission or reception of telephonic, electronic or radio communications.

(3) **"Telephone service" or "telecommunication service."** Includes, but is not limited to, any service provided for a charge or compensation to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, wireless, radio, electromagnetic, photoelectronic or photo-optical system.

(4) **"Telecommunication service provider."** A person or entity providing telecommunication service, whether directly or indirectly as a reseller, including, but not limited to, a cellular, paging or other wireless communications company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office or other equipment or telecommunication service.

(5) **"Unlawful telecommunication device."** Any electronic serial number, mobile identification number, personal identification number or any telecommunication device that is capable of unlawfully acquiring or facilitating the acquisition of a telecommunication service or that has been altered, modified, programmed or reprogrammed alone or in conjunction with another access device or other equipment to so acquire or facilitate. **"Unlawful Telecommunication Device"** includes, but is not limited to, phones altered to unlawfully obtain service from the telecommunication service provider, tumbler phones, counterfeit or clone phones, tumbler microchips, counterfeit or clone microchips, and other instruments capable of disguising their identity or location or of unlawfully gaining access to a communications system operated by a telecommunication service provider."

Section 2. This Act shall become effective 60 days after enactment.

Approved July 10, 1996

## CHAPTER 476

## FORMERLY

SENATE BILL NO. 385  
AS AMENDED BY HOUSE AMENDMENT NO. 2AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO SPECIAL  
ANIMAL WELFARE LICENSE PLATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend §2139F (f), Title 21 of the Delaware Code, by striking said subsection in its entirety and by substituting in lieu thereof a new §2139F (f) to read as follows:

"(f) The funds derived by the State from that portion of the one-time fee of \$50 that are not defined as an administrative fee pursuant to subsection (d) of this section shall be deposited in the State Treasury and credited to a special fund account to be known as the Animal Welfare License Fund in the Department of Natural Resources and Environmental Control, Division of Fish and Wildlife. The Department of Natural Resources and Environmental Control shall divide the funds between organizations or veterinary clinics that provide low-cost dog or cat spaying and neutering services and nonprofit organizations that provide shelter to unwanted stray dogs and cats. In determining how the funds shall be expended, the Department shall consider the recommendations of the Fund Committee, as defined in (g) below, provided that such recommendations shall not be binding on the Department."

Section 2. Amend § 2139F by redesignating existing subsection (g) as subsection (h), and by adding a new subsection (g) to read as follows:

"(g) For purposes of this section, the 'Fund Committee' shall mean a committee comprised of the following five (5) persons:

- (1) The Secretary of the Department of Natural Resources and Environmental Control or his or her designee, which person shall also act as chairperson of the committee;
- (2) A representative of the Kent County SPCA;
- (3) A representative of the Delaware SPCA;
- (4) A representative of the Delaware Humane Association; and
- (5) The President of the State Veterinary Board or his or her designee.

The Fund Committee shall meet as often as is necessary at times and in locations specified by the Chairperson. The Fund Committee shall issue recommendations to the Department of Natural Resources and Environmental Control as often as the Chairperson deems necessary but no less often than annually. Three members shall comprise a quorum and actions by the committee may only be taken by majority vote of those members present. The members shall receive no compensation for their services."

Approved July 10, 1996

## CHAPTER 477

## FORMERLY

HOUSE BILL NO. 507  
AS AMENDED BY HOUSE AMENDMENT NO. 1 AND  
SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO HABITUAL  
CRIMINALS AND DEFINING VIOLENT FELONIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend § 4201 of Title 11 of the Delaware Code by adding a new subsection  
thereto, said new subsection to read:

“(c) The following felonies shall be designated as violent felonies:

<u>Title 11, Section</u>	<u>Crime</u>
513	Conspiracy First Degree
602	Aggravated Menacing
604	Reckless Endangering First Degree
612	Assault in the Second Degree
613	Assault in the First Degree
614	Assault on a Sports Official
629	Vehicular Assault in the First Degree
630	Vehicular Homicide in the Second Degree
630A	Vehicular Homicide in the First Degree
631	Criminally Negligent Homicide
632	Manslaughter
633	Murder by Abuse or Neglect in the Second Degree
634	Murder by Abuse or Neglect in the First Degree
635	Murder in the Second Degree
636	Murder in the First Degree
645	Promoting Suicide
768	Unlawful Sexual Contact in the Second Degree
769	Unlawful Sexual Contact in the First Degree
770	Unlawful Sexual Penetration in the Third Degree
771	Unlawful Sexual Penetration in the Second Degree
772	Unlawful Sexual Penetration in the First Degree
773	Unlawful Sexual Intercourse in the Third Degree

774	Unlawful Sexual Intercourse in the Second Degree
775	Unlawful Sexual Intercourse in the First Degree
776	Sexual Extortion
777	Bestiality
778	Continuous Sexual Abuse of Child
779	Dangerous Crime Against a Child
782	Unlawful Imprisonment in the First Degree
783	Kidnapping in the Second Degree
783A	Kidnapping in the First Degree
802	Arson in the Second Degree
803	Arson in the First Degree
825	Burglary in the Second Degree
826	Burglary in the First Degree
831	Robbery in the Second Degree
832	Robbery in the First Degree
846	Extortion
1108	Sexual Exploitation of a Child
1109	Unlawfully Dealing in Material Depicting a Child
1250	Assault in the First Degree Against a Law Enforcement Animal
1253	Escape After Conviction
1254	Assault in a Detention Facility
1256	Promoting Prison Contraband (Deadly Weapon)
1302	Riot
1304	Hate Crimes
1312A	Stalking
1338	Bombs, Incendiary Devices, Molotov Cocktails and Explosive Devices
1339	Adulteration (Causing Injury or Death)
1353	Promoting Prostitution in the First Degree
1442	Carrying a Concealed Deadly Weapon (subsequent Offense)
1444	Possessing a Destructive Weapon
1445	Unlawfully Dealing with a Dangerous Weapon

- 1447 Possessing a Deadly Weapon During the Commission of a Felony
- 1447A Possessing a Firearm during the Commission of A Felony
- 1455 Engaging in a Firearms Transaction on Behalf of Another (subsequent Offense)
- 1449 Wearing Body Armor During the Commission of a Felony
- 1503 Racketeering
- 3533 Aggravated Act of Intimidation

Title 16, Section Crime

- 1136 Abuse/Mistreatment/Neglect of a Patient
- 4751 Manufacture/Delivery/Possession with Intent to Deliver a Controlled or Counterfeit Controlled Substance, Manufacture or Delivery Causing Death
- 4752 Manufacture/Delivery/Possession with Intent to Deliver a Controlled or Counterfeit Controlled Substance
- 4752A Unlawful Delivery of a Noncontrolled Substance
- 4753A Trafficking in Marijuana, Cocaine, Illegal Drugs, Methamphetamine, LSD or Designer Drugs
- 4754A Possession and delivery of a Noncontrolled Prescription Drug
- 4761 Distribution to Minors
- 4767 Distribution, Delivery or Possession of a Controlled Substance within 1,000 feet of School Property
- 4768 Distribution, Delivery or Possession of a Controlled Substance within 300 feet of a Park or Recreation Area
- 4773 Delivery of Drug Paraphernalia to a Minor

Title 31, Section Crime

- 3913 Abuse/Neglect/Exploit/Mistreat an Infirm Adult

Any attempt to commit any felony designated in this subsection as a violent felony shall also be designated as a violent felony."

Section 2. Amend § 4214(a), Title 11 of the Delaware Code, by adding the following new sentence to said subsection, said new sentence to be placed immediately after the first sentence of said subsection:

"Notwithstanding any provision of this Title to the contrary, any person sentenced pursuant to this subsection shall receive a minimum sentence which shall not be less than the statutory maximum penalty provided elsewhere in this Title for the fourth or subsequent felony which forms the basis of the State's petition to have the person

declared to be an habitual criminal except that this minimum provision shall apply only when the fourth or subsequent felony is a Title 11 violent felony, as defined in section 4201(c) of this Title."

Approved July 10, 1996

CHAPTER 478

FORMERLY

SENATE BILL NO. 243  
AS AMENDED BY HOUSE AMENDMENT NO. 1 AND  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 5, TITLE 11 OF THE DELAWARE CODE RELATING TO CRIMINAL OFFENSES; AND MAKING THE POSSESSION OF OR DEALING IN CERTAIN DEVICES DESIGNED, FASHIONED OR OTHERWISE ADAPTED FOR THEFT OR BURGLARY A CRIMINAL OFFENSE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 828, Title 11 of the Delaware Code, by striking the catchline, and by substituting in lieu thereof:

“§ 828. Possession of Burglar’s tools or instruments facilitating theft; class F felony.”

Section 2. Amend § 828, Title 11 of the Delaware Code, by striking it in its entirety and by substituting in lieu thereof the following:

“A person is guilty of possession of burglar’s tools or instruments facilitating theft when the person possesses any tool, instrument, or other thing adapted, designed, or commonly used for committing or facilitating:

(1) offenses involving unlawful entry into or upon premises;

(2) offenses involving the unlocking, overriding, or disabling of a security device without authorization; or,

(3) offenses involving forcible breaking or opening of safes, vending machines, automatic teller machines, lock boxes, gates, doors, or any container or depositories of property, under circumstances evincing an intent to use or knowledge that some other person intends to use the same in the commission of an offense of such character. Possession of burglar’s tools or instruments facilitating theft is a Class F felony.”

Section 3. Amend § 829, Title 11 of the Delaware Code by adding thereto the following new subsection:

“(f) “Security Device” includes any lock, whether mechanical or electronic; or any warning device designed to alert a person or the general public of a possible attempt to gain unlawful entry into or upon premises or a possible attempt to unlock, bypass, or otherwise disable a lock.

(g) A person possesses burglar tools or instruments facilitating theft “under circumstances evincing an intent to use or knowledge that some other person intends to use” such when the person possesses the tools or instruments at a time and a place proximate to the commission or attempt to commit a trespass, burglary, or theft-related offense, or otherwise under circumstances not manifestly appropriate for what lawful uses the tools or instruments may have.”

Approved July 10, 1996

## CHAPTER 479

## FORMERLY

## HOUSE BILL NO. 585

AN ACT TO AMEND CHAPTER 59 OF TITLE 10 OF THE DELAWARE CODE REGARDING LEGAL NAME CHANGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 5901 of Title 10 of the Delaware Code by deleting said section in its entirety and substituting in lieu thereof the following:

"Section 5901. Petition for change of name.

(a) Any person who desires to change his or her name, shall present a petition, duly verified, to the Court of Common Pleas sitting in the county in which the person resides. The petition shall set forth such person's name and the name he or she desires to assume.

(b) Family Court shall have jurisdiction over a change of name as part of divorce proceedings or as part of the establishment of paternity under the Uniform Parentage Act.

(c) The common law right of any person to change his or her name is hereby abrogated as to individuals subject to the supervision of the State of Delaware Department of Correction. Such individuals may only effect a name change by petitioning the Court of Common Pleas as follows:

(1) Individuals subject to the supervision of the Department of Correction shall be prohibited from adopting any names other than their legal names or otherwise effecting name changes, except as provided in this subsection.

(2) When, based upon testimony or sworn affidavits, the court finds that a petition for a name change of an individual subject to the supervision of the Department of Correction is motivated by a sincerely held religious belief, the court may grant such petition. In any case in which an individual subject to the supervision of the Department of Correction petitions the Court of Common Pleas for a change of name, the Court shall provide notice and opportunity to oppose the name change to the Department of Correction and shall permit it to submit any appropriate documentation in support of its opposition.

(3) If an individual is granted a name change pursuant to paragraph 2 of this subsection, he or she must provide all names previously held or adopted, as well as his or her legal name when signing any legal document or providing information to a law enforcement officer.

(4) The granting of any name changes pursuant to this subsection shall not restrict the Department of Correction from maintaining institutional files or otherwise referring to individuals by the names under which they became subject to the Department's supervision.

Approved July 10, 1996

CHAPTER 480

FORMERLY

SENATE BILL NO. 389

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CERTAIN  
CRIMES COMMITTED BY PERSONS IN CUSTODY

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE (Two-thirds of all members elected to each House thereof concurring  
therein):

Section 1. Amend Title 11 of the Delaware Code by adding thereto a new section, said  
section to be designated as §1260, to read as follows:

“§ 1260. Misuse of Prisoner Mail; Class A misdemeanor; Class G felony.

A person is guilty of misuse of prisoner mail when being a person in custody in a State  
detention facility, or in the custody of the Department of Health and Social Services or the  
Department of Correction, he or she intentionally:

- (1) communicates by mail with a person not in custody in a manner which he  
or she knows is likely to cause inconvenience, annoyance or alarm; or
- (2) designates a written communication as legal mail knowing that said written  
communication is wholly unrelated to any actual or potential legal matter  
or to the administration of justice.

Misuse of prisoner mail is a class A misdemeanor unless the person has previously been  
convicted under this section, in which case it is a class G felony.”

Approved July 10, 1996

## CHAPTER 481

## FORMERLY

SENATE BILL NO. 340  
 AS AMENDED BY SENATE AMENDMENT NOS. 1 & 2 AND  
 HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10 AND TITLE 11 OF THE DELAWARE CODE RELATING  
 TO APPEALS BY THE STATE IN CRIMINAL CASES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
 DELAWARE:

Section 1. Amend §9902 of Title 10 of the Delaware Code by adding thereto new subsections to be designated as (d), (e), (f) and (g) to read as follows:

"(d) The State shall have an absolute right to appeal to an appellate court from any order entered in a lower court which grants an accused any of the following: a new trial or judgment of acquittal after a verdict; a modification of a verdict; an arrest of judgment; relief in any post-conviction proceeding or in any action collateral attacking a criminal judgment; or a new punishment hearing in a capital case after the court has imposed a sentence of death; or any order or judgment declaring any act of the General Assembly, or any portion of any such act, to be unconstitutional under either the Constitution of the United States or the State of Delaware, inoperative or unenforceable; except that no appeal shall lie where otherwise prohibited by the double jeopardy clause of the Constitutions of the United States or of this State.

(e) The State shall have an absolute right to appeal to an appellate court any ruling of a lower court on a question of law or procedure adverse to the State in any case in which the accused was convicted and appeals from the judgment, except that the decision or result of the State's appeal shall not affect the rights of the accused unless the accused, on his or her appeal, is awarded a new trial or a new sentencing hearing. Once the State perfects its cross-appeal, the appellate court shall review and rule upon the questions presented therein regardless of the disposition of the defendant's appeal.

(f) The State shall have an absolute right to appeal any sentence on the grounds that it is unauthorized by, or contrary to, any statute or court rule, in which case the decision or result of the State's appeal shall affect the rights of the accused.

(g) Any appeal brought by the State pursuant to subsection (e) or (f) of this section shall be personally authorized by either the Attorney General or the Chief Deputy Attorney General."

Section 2. Amend §9904 of Title 10 of the Delaware Code by adding after the phrase "appealed from" and before the "." the following:

*" , or, in any case in which the State elects to prosecute a cross appeal, notice of the cross appeal shall be filed within 30 days from the filing of a notice of appeal by the defendant "*

Section 3. Amend Chapter 99 of Title 10 of the Delaware Code by adding thereto a new section, said new section to be designated as §9905, to read as follows:

"§9905. Principles of Construction

The provisions of this Chapter shall be liberally construed so as to afford the State the broadest possible right to appeal in a criminal case, but only to the extent permitted by the Constitutions of the United States and the State of Delaware."

Section 4. Amend §1053(a)(1) of Title 10 of the Delaware Code by redesignating the existing text thereof as subparagraph (A) and by adding thereto new subparagraphs to be designated as (B), (C), (D) and (E), to read as follows:

“(B) Notwithstanding any section of this Chapter to the contrary, the State shall have an absolute right to appeal to an appellate court from any order of the Family Court which grants an accused any of the following: a new trial or judgment of acquittal after a verdict or an adjudication of delinquency; a modification of a verdict or an adjudication of delinquency; an arrest of judgment; relief in any post-conviction proceeding or in any action collaterally attacking a criminal judgment or an adjudication of delinquency, or any order or judgment declaring any act of the General Assembly, or any portion of such act, to be unconstitutional under either the Constitution of the United States or the State of Delaware, inoperative or unenforceable, except that no appeal shall lie where otherwise prohibited by the double jeopardy clause of the Constitution of the United States or of this State.

(C) Notwithstanding any section of this Chapter to the contrary, the State shall have an absolute right to appeal to an appellate court any ruling of the Family Court on a question of law or procedure adverse to the State in any case in which the accused was convicted or adjudicated delinquent and appeals from the judgment, except that the decision or result of the State’s appeal shall not affect the rights of the accused unless the accused, on his or her appeal, is awarded a new trial or a new sentencing hearing. Once the State perfects its cross-appeal, the appellate court shall review and rule upon the questions presented therein regardless of the disposition of the accused’s appeal.

(D) Notwithstanding any section of this Chapter to the contrary, the State shall have an absolute right to appeal any sentence on the grounds that it is unauthorized by, or contrary to, any statute or court rule, in which case the decision or result of the State’s appeal shall affect the rights of the accused.

(E) Any appeal brought by the State pursuant to subparagraphs (C) or (D) of this subsection shall be personally authorized by either the Attorney General or the Chief Deputy Attorney General.”

Section 5. Amend §1053(c) of Title 10 of the Delaware Code by adding after the phrase “appealed from” and before the “.” The following:

“, or, in any case in which the State elects to prosecute a cross appeal, notice of the cross appeal shall be filed within 30 days from the filing of a notice of appeal by the defendant.”

Section 6. Amend §1053 of Title 10 of the Delaware Code by adding thereto a new subsection (e), to read as follows:

“(e) The provisions of this section shall be liberally construed so as to afford the State the broadest possible right to appeal in a criminal case, but only to the extent permitted by the Constitution of the United States and the State of Delaware.”

Section 7. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end of the provisions of the Act are declared to be severable.

Section 8. The provisions of this Act shall be effective immediately upon enactment, except that the provisions of Section 1 which amend § 9902 of Title 10 of the Delaware Code by adding a new subsection (d) thereto shall not be effective as to the State’s right to appeal to the Supreme Court unless and until Article IV of the Constitution of the State of Delaware is appropriately amended so as to confer jurisdiction upon the Supreme Court over the matters described in said new subsection.

Approved July 10, 1996

## CHAPTER 482

## FORMERLY

HOUSE BILL NO. 429  
AS AMENDED BY HOUSE AMENDMENT NO. 1AN ACT TO AMEND CHAPTER 19, TITLE 24 OF THE DELAWARE CODE RELATING  
TO THE BOARD OF NURSING

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend subsection (j), §1903, Chapter 19, Title 24 of the Delaware Code by striking said subsection (j) in its entirety, and substituting in lieu thereof the following:

"(j) No member of the Board shall hold any elective office in, nor be a representative of, any local, state, regional or national nursing association."

Section 2. Amend §1903, Chapter 19, Title 24 of the Delaware Code by adding thereto a new subsection, designated as subsection (k), which new subsection shall read as follows:

"(k) The provisions set forth for 'employees' in Chapter 58, of Title 29 of the Delaware Code shall apply to all members of the Board, and to all agents appointed or otherwise employed by the Board."

Section 3. Amend subsection (a), §1904, Chapter 19, Title 24 of the Delaware Code by striking said subsection (a) in its entirety, and substituting in lieu thereof the following:

"(a) The Board shall elect, annually, from its members a President and Vice-President. In the event of a vacancy in one of the offices, a replacement shall be elected at the next Board meeting or at a meeting called for that purpose."

Section 4. Amend subsection (6), §1906, Chapter 19, Title 24 of the Delaware Code by striking the (;) at the end of said subsection (6), and substituting in lieu thereof the following:

", and shall also prescribe the procedures for subsequent examinations of applicants who fail an examination;"

Section 5. Amend subsection (b), §1908, Chapter 19, Title 24 of the Delaware Code by striking present subsection (b) in its entirety, and substituting in lieu thereof the following:

"(b) Special meetings of the Board may be called by the Executive Director upon the request of the President or any two members."

Section 6. Amend subsection (d), §1908, Chapter 19, Title 24 of the Delaware Code by striking present subsection (d), and substituting in lieu thereof the following:

"(d) The amount charged for each fee imposed under this Chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board; and the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this Chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year, the Division of Professional Regulation, or any other state agency acting on its behalf, shall compute for each separate service or activity, the appropriate Board fees for the coming year."

Section 7. Amend subsection (1), §1910, Chapter 19, Title 24 of the Delaware Code by striking the words "graduate of" as the same appear in said subsection (1), and substituting in lieu thereof the words "graduate of, and holds a certificate from,".

Section 8. Amend subsection (4), §1910, Chapter 19, Title 24 of the Delaware Code by striking present subsection (4) in its entirety, and substituting in lieu thereof the following:

"(4) is of such satisfactory physical and mental health as is consistent with the Americans with Disabilities Act;"

Section 9. Amend subsection (6), §1910, Chapter 19, Title 24 of the Delaware Code by striking the words "a 1-year period" as the same appear in subsection (6) and substituting in lieu thereof the words "two years".

Section 10. Amend §1911, Chapter 19, Title 24 of the Delaware Code by striking the first sentence of said Section in its entirety.

Section 11. Amend subsection (b), §1912, Chapter 19, Title 24 of the Delaware Code by striking the words "a 1-year period" as the same appear in subsection (b) and substituting in lieu thereof the words "two years".

Section 12. Amend subsection (1), §1914, Chapter 19, Title 24 of the Delaware Code by striking the words "graduate of" as the same appear in said subsection (1) and substituting in lieu thereof the words "graduate of, and holds a certificate from,".

Section 13. Amend subsection (4), §1914, Chapter 19, Title 24 of the Delaware Code by striking present subsection (4) in its entirety, and substituting in lieu thereof the following:

"(4) is of such satisfactory physical and mental health as is consistent with the Americans with Disabilities Act;"

Section 14. Amend subsection (6), §1914, Chapter 19, Title 24 of the Delaware Code by striking the words "a 1-year period" as the same appear in subsection (6) and substituting in lieu thereof the words "two years".

Section 15. Amend §1915, Chapter 19, Title 24 of the Delaware Code by striking subsection (a) in its entirety, and by removing the subsection designation (b) from presently-existing subsection (b).

Section 16. Amend subsection (b), §1916, Chapter 19, Title 24 of the Delaware Code by striking the words "a 1-year period" as the same appear in said subsection (b) and substituting in lieu thereof the words "two years"

Section 17. Amend subsection (a), §1918, Chapter 19, Title 24 of the Delaware Code by striking the word "biannual" as the same appears in said subsection (a), and substituting the word "biennial" in lieu thereof.

Section 18. Amend subsection (a), §1918, Chapter 19, Title 24 of the Delaware Code by striking the words "a 1-year period" as the same appear in subsection (a), and substituting in lieu thereof the words "two years".

Section 19. Amend subsection (c), §1918, Chapter 19, Title 24 of the Delaware Code by striking the words "a 1-year period" as the same appear in subsection (c), and substituting in lieu thereof the words "two years".

Section 20. Amend subsection (g), §1918, Chapter 19, Title 24 of the Delaware Code by striking the words "a 1-year period" as the same appear in subsection (g), and substituting in lieu thereof the words "two years".

Section 21. Amend subparagraph f, paragraph (3), subsection (c), §1922, Chapter 19, Title 24 of the Delaware Code by striking present subparagraph f. in its entirety, and substituting in lieu thereof the following:

"f. All decisions of the Board shall be final and conclusive. Where the practitioner is in disagreement with the action of the Board, he or she may appeal the Board's decision to the Superior Court within 30 days of service, or of the postmarked date of the copy of the decision mailed to him or her. The appeal shall be on the record to the Superior Court and shall be as provided in §§10142-10145, Chapter 101 of Title 29 of the Delaware Code."

Section 22. Amend paragraph (3), subsection (a), §1922, Chapter 19, Title 24 of the Delaware Code by striking present paragraph (3) in its entirety and renumbering each succeeding paragraph of subsection (a) accordingly.

Section 23. Amend §1923, Chapter 19, Title 24 of the Delaware Code by striking present §1923 in its entirety.

Section 24. Amend §1922A., Chapter 19, Title 24 of the Delaware Code by re-designating present §1922A. as new §1923 of said Title 24.

Section 25. Amend subsection (d), §1904, Title 24 of the Delaware Code by striking said subsection (d) in its entirety and renumbering each succeeding subsection accordingly.

Section 26. Amend subsection (18), §1906, Title 24 of the Delaware Code by striking said subsection (18) in its entirety and renumbering each succeeding subsection accordingly.

Section 27. Amend subsection (a), §1918, Title 24 of the Delaware Code by striking the words "before the date determined by the Board" as the same appears in said subsection.

Section 28. Further amend subsection (a), §1918, Title 24 of the Delaware Code by striking the last sentence of said subsection (a).

Section 29. Amend paragraph (1), subsection (c), §1922, Title 24 of the Delaware Code by striking said paragraph (1), and substituting in lieu thereof the following:

(1) When a complaint is filed pursuant to §8810, Title 29 of the Delaware Code, alleging a violation of this Chapter, the complaint shall be received and investigated by the Division of Professional Regulation; and the Division shall be responsible for issuing a final written report at the conclusion of its investigation.

Approved July 10, 1996

## CHAPTER 483

### FORMERLY

#### SENATE BILL NO. 335

#### AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PERSONAL INCOME TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1109(a)(2)b., Title 30 of the Delaware Code by deleting the first sentence of said subparagraph and substituting in lieu thereof the following sentence:

"In the case of a self-employed individual, the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, the taxpayer's spouse, and dependents, less the amount allowed the taxpayer as a deduction pursuant to Section 162(1) (26 U.S.C. §162(1)) or successor provision of the Internal Revenue Code."

Section 2. This Act will be effective for tax years beginning after December 31, 1995

Approved July 11, 1996

CHAPTER 484  
FORMERLY  
SENATE BILL NO. 481

AN ACT TO AMEND TITLE 30, DELAWARE CODE, RELATING TO LICENSE FEES AND GROSS RECEIPTS TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2502(c)(1), Title 30, Delaware Code, by striking the figure "65/100 of 1 percent" as it appears therein and inserting in lieu thereof the figure "0.624%".

Section 2. Amend §2907(c)(1), Title 30, Delaware Code, by striking the figure "1/10 of 1 percent" as it appears therein and inserting in lieu thereof the figure "0.096%".

Section 3. Amend §2903(c)(1), Title 30, Delaware Code, by striking the figure "2/10 of 1 percent" as it appears therein and inserting in lieu thereof the figure "0.192%".

Section 4. Amend §2301(d)(1), Title 30, Delaware Code, by striking the figure "4/10 of 1 percent" as it appears therein and inserting in lieu thereof the figure "0.384%".

Section 5. Amend §2702(b)(1), Title 30, Delaware Code, by striking the figure "1/4 of 1 percent" as it appears therein and inserting in lieu thereof the figure "0.240%".

Section 6. Amend §2902(c)(1), Title 30, Delaware Code, by striking the figure "4/10 of 1 percent" as it appears therein and inserting in lieu thereof the figure "0.384%".

Section 7. Amend §2904(c)(1), Title 30, Delaware Code, by striking the figure "1/10 of 1 percent" as it appears therein and inserting in lieu thereof the figure "0.096%".

Section 8. Amend §2905(b)(1), Title 30, Delaware Code, by striking the figure "75/100 of 1 percent" as it appears therein and inserting in lieu thereof the figure "0.720%".

Section 9. Amend §2906(c)(1), Title 30, Delaware Code, by striking the figure "65/100 of 1 percent" as it appears therein and inserting in lieu thereof the figure "0.624%".

Section 10. Amend §4305(b), Title 30, Delaware Code, by striking the figure "3/10 of 1%" as it appears therein and inserting in lieu thereof the figure "0.288%".

Section 11. Amend §4302(a), Title 30, Delaware Code, by striking the figure "2%" as it appears therein and inserting in lieu thereof the figure "1.920%".

Section 12. Amend §2902(c)(3), Title 30, Delaware Code, by striking the figure "25 percent" as it appears therein and inserting in lieu thereof the figure "0.240%".

Section 13. Amend §2905(g), Title 30, Delaware Code, by striking the figure "75/100 of 1 percent" as it appears therein and inserting in lieu thereof the figure "0.720%".

Section 14. Amend Chapter 29, Title 30 of the Delaware Code, by designating § 2908 as new § 2909 of said chapter.

Section 15. Amend Chapter 29, Title 30 of the Delaware Code, by adding to said chapter a new § 2908 to read as follows:

"§ 2908. Grocery supermarket retailers. (a) Every person engaged in the business of operating a retail grocery supermarket shall be exempt from the provisions of

§2905 of this title and shall be subject to the provisions of this section with regard to the retail sales of such store. For purposes of this section, a grocery supermarket shall mean a retail store with an area of more than 6,000 square feet and whose primary business is selling food for human consumption having on stock available for retail sale and purchase at least 12,000 different food stock units ('SKU's') at least 90% of whose sales of food suitable for human consumption consists of food that is not immediately consumable. For purposes of this section, 'not immediately consumable' shall be defined as any product purchased at the grocery store that is intended for consumption at home in which some preparation or cooking is necessary. Notwithstanding and in addition to this definition, the following products shall be considered not immediately consumable: frozen ice cream, frozen or refrigerated yogurt, all fresh fruits and vegetables, deli products sold by the pound or packaged on the shelf, cooked shrimp or other seafood sold by the pound, bottled or canned sodas including bottled waters, all snack foods such as but not limited to potato chips, cookies, and packaged candies, refrigerated dairy products, bakery goods, dry foods sold in bulk by the pound, and any other food item that is generally consumed at home.

(b) All persons defined in subsection (a) of this section desiring to engage in business in this State shall obtain a license upon making application to the Division of Revenue and paying a fee of \$75 plus \$25 for each separate branch or location. If monthly payments thereafter are made in accordance with subsection (c) of this section, such license shall be valid through December 31 at which time it may be renewed for a full year and every year thereafter, provided that the grocery store retailer makes application therefor and payment of \$75 plus \$25 for each separate branch or location.

(c) In addition to the license fee required by subsection (b) of this section every grocery store retailer shall pay a license fee at the rate of 0.384% of the first \$2 million per month and 0.720% thereafter of the aggregate gross receipts attributed to all goods sold within the State, which fee shall be payable monthly on or before the 20th day of each month with respect to the aggregate gross receipts of the immediately preceding month. In computing the fee due on the aggregate gross receipts for any month, there shall be allowed a deduction of \$35,000. Solely for purposes of determining the rate of taxation and the monthly exclusion under this subsection but not for determining the applicability of the definition of 'grocery supermarket,' all branches or entities comprising an enterprise with common ownership or common direction and control shall be considered as one. The monthly returns shall be accompanied by a certified statement on such forms as the Division of Revenue shall require in computing the fee due."

Section 16. This Act shall be effective for license years beginning and gross receipts received after December 31, 1996.

Section 17. Except as provided in Section 18, if any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 18. Should Section 15 of this Act or its application to any person, business or circumstance be found invalid or in conflict with the Delaware or United States Constitutions, such invalidity shall render Section 15 in its entirety ineffective with regard to any person or business licensed under the provisions of this Act. Further, such ineffectiveness shall be deemed to occur as of the effective date of any such finding of invalidity with regard to any person or business, and any business licensed and paying tax under this Act shall forthwith make remittance to the Division of Revenue of the amount of the difference between the rate determined under this Act and the amount of tax that would have been paid in the absence of this Act for the entire time of licensure under this Act together with interest determined in accordance with the statutory rate applied to underpayments of tax, notwithstanding any otherwise applicable period of limitations.

CHAPTER 485

FORMERLY

HOUSE BILL NO. 712

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PUBLIC UTILITY TAX ON CABLE TELEVISION SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 5502(b)(1), Title 30, Delaware Code, by striking the phrase "telegraph or cable television communications" as it appears in said paragraph and substitute in lieu thereof the phrase "or telegraph".

Section 2. Amend § 5502(b), Title 30, Delaware Code, by adding to said subsection a new paragraph (3) to read as follows:

"(3) A tax is imposed upon any distributor of cable television communications commodities and services which tax shall be at the rate of 2.125% of the gross receipts or tariff charges received by the distributor for such commodities or services distributed within this State."

Section 3. This Act shall be effective for all services or commodities distributed on or after October 1, 1996.

Approved July 11, 1996

## CHAPTER 486

## FORMERLY

## SENATE BILL NO. 483

## AN ACT TO AMEND TITLE 5 RELATING TO THE BANK FRANCHISE TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1105, Title 5 of the Delaware Code, by adding to said section new subsections (d), (e) and (f) to read as follows:

“(d) For taxable years beginning after December 31, 1996, and ending before January 1, 2002, there shall be allowed as a credit against the tax imposed under subsection (a) an amount equal to \$400 for each new qualified employee in excess of 50 qualified employees above the number of employees employed by the banking organization in full time employment during the base year. For purposes of this subsection, the base year shall be the period after December 31, 1995, and before January 1, 1997.

(e) The following conditions apply in determining the credit under subsection (d) of this section:

(1) No credit may be claimed until the taxpayer has made new investments of at least \$15,000 per qualified employee in excess of the number of employees employed by the banking organization in full time employment during the base year. ‘New investment,’ for purposes of this subsection, shall include only the cost of land and improvements to land, machinery, and equipment; provided that such new investment is placed in service within this State after December 1996 and was not used by any person at any time within the one year period ending on the date the taxpayer placed such property in service in the conduct of the business of a banking organization. For purposes of this subsection, if the new investment is leased or subleased by the taxpayer, the amount of new investment shall be deemed to be eight times the net annual rent paid or incurred by the taxpayer for such investment. The net annual rent shall be the gross rent paid or incurred by the taxpayer during the taxable year, less any gross rental income received by the taxpayer from sublessees of any portion of such facility during such taxable year; and

(2) In determining the number of qualified employees, there shall be considered only employees:

i. Who are employed within this State on a regular and full time basis. ‘Full time employment’ shall have the meaning ascribed to that term in §2010(14) of title 30;

ii. For whom the banking organization or trust company provides health care benefits as defined in §2010(15) of title 30; and

iii. Who have been employed in this State by the taxpayer for a continuous period of at least six months, verifiable by documentary evidence, and who were not employed at the same facility in substantially the same capacity by a different employer during all or a part of the base year.

(f) (1) The amount of credit allowable or carried forward under subsections (b),(c),(d), and (e) of this section shall together not exceed 50% of the amount of tax imposed upon the taxpayer by subsection (a) for such taxable year.

(2) The amount of credit determined under subsection (d) of this section for any taxable year that is not allowable for such taxable year solely as a result of the limitation contained in paragraph (1) of this subsection shall be a credit carryover to each of the succeeding nine years in the manner described in §2011(f) of title 30."

Section 2. Amend §1105(a), Title 5 of the Delaware Code, by striking the period "." at the end of the said subsection and substituting in lieu thereof the following: "; 1.7% of the amount of taxable income for years beginning after December 31, 1996, in excess of \$650,000,000."

Section 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared severable.

Section 4. Section 1 of this Act shall be effective for tax years beginning after December 31, 1996 and ending before January 1, 2002. Section 2 of this Act shall be effective for tax years beginning after December 31, 1996.

Approved July 11, 1996

## CHAPTER 487

## FORMERLY

## SENATE BILL NO. 484

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE; 64 DELAWARE LAWS, CHAPTER 460, AS AMENDED; AND 70 DELAWARE LAWS, CHAPTER 219, RELATING TO DELAWARE TAXES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2010, Title 30 of the Delaware Code, by striking the year "1997" as the same appears in subsections (4) and (5) of said section and substituting in lieu thereof the year "2002".

Section 2. Amend §12 of 64 Delaware Laws, chapter 460, as amended by 67 Delaware Laws, chapter 120; 68 Delaware Laws, chapter 6; and 68 Delaware Laws, chapter 202, by striking the year "1997" as the same appears in said section and substituting in lieu thereof the year "2002".

Section 3. Amend §2011(b), Title 30 of the Delaware Code, by striking the phrase "Two hundred fifty dollars" as the same appears in paragraphs (1) and (2) of said subsection and in each instance substituting in lieu thereof the symbol and figure "\$400".

Section 4. Amend §2021(a), Title 30 of the Delaware Code, by striking the phrase "'\$500' for '\$250'" and substituting in lieu thereof the phrase "'\$650' for '\$400'".

Section 5. Amend §2011(l), Title 30 of the Delaware Code, by striking the phrase "'Five hundred dollars' for 'Two hundred fifty dollars'" as it appears in said subsection and substituting in lieu thereof the phrase "'\$650' for '\$400'".

Section 6. Amend §2021(d), Title 30 of the Delaware Code, by striking the phrase "'\$750' shall be substituted for '\$500'" as it appears in paragraph (1) of said subsection and substituting in lieu thereof the following phrase: "'\$900' shall be substituted for '\$650'".

Section 7. Amend §6 of 70 Delaware Laws, chapter 219, by striking the year "1997" as it appears in said section and substituting in lieu thereof the year "2002".

Section 8. Amend §2041(b), Title 30 of the Delaware Code, by striking the symbol and figure "\$250" each time they appear in said subsection and substituting in lieu thereof in each instance the symbol and figure "\$400".

Section 9. Amend §2042(b), Title 30 of the Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection (b) to read as follows:

"(b) The amount of the credit allowed under subsection (a) of this section shall, for such tax year, be the amount of credit allowed under § 2011 of this title applied with respect to such qualified facility by substituting '\$650' for '\$400' in § 2011(b)(1) and (2) of this title; or, in the event the taxpayer also qualifies for credit under § 2021 of this title, by substituting '\$900' instead of '\$650' for '\$400' in § 2011(b)(1) and (2) of this title."

Section 10. Amend §2043(b), Title 30 of the Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection (b) to read as follows:

"(b) The amount of the credit allowed under subsection (a) of this section shall, for such tax year, be the amount of credit allowed under §2011 of this title

applied with respect to such qualified facility by substituting '\$650' for '\$400' in §2011(b)(1) and (2) of this title; or, in the event the taxpayer also qualifies for credit under §2021 of this title, by substituting '\$900' instead of '\$650' for '\$400' in §2011(b)(1) and (2) of this title."

Section 11. Amend §2044(b), Title 30 of the Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection (b) to read as follows:

"(b) The amount of the credit allowed under subsection (a) of this section shall, for such tax year, be the amount of credit allowed under §2011 of this title applied with respect to such qualified facility by substituting '\$650' for '\$400' in §2011(b)(1) and (2) of this title; or, in the event the taxpayer also qualifies for credit under §2021 of this title, by substituting '\$900' instead of '\$650' for '\$400' in §2011(b)(1) and (2) of this title."

Section 12. Amend §2010(3), Title 30 of the Delaware Code, by designating paragraph h. as paragraph k. of said subsection, by striking the word "or" as it appears at the end of paragraph g. of said subsection (3), and by adding to said subsection (3) a new paragraph j. to read as follows:

"j. Any activity more than 50% of whose annual gross receipts are derived from aviation services. The term "aviation services" means a business conducted by an employer in Delaware (i) at an airport owned or operated by (A) the State, (B) any political subdivision of the State, (C) any agency or instrumentality of the State or of its political subdivisions, or (D) a bi-state authority created by a compact between states and approved by the Congress of the United States, (ii) employing at least 100 qualified employees, (iii) constituting the inspection, maintenance, repair, overhaul or remanufacture of aircraft, aircraft engines and other aircraft components or parts; the performance of retrofits of aircraft engines and other components to aircraft and the performance of other modifications to aircraft (including interior and exterior modifications, whether to new or used aircraft, and the design, engineering, installation and certification of such modifications); the sale of aircraft components or parts and lubricants or other consumable goods in connection with the foregoing activities; or any combination of the foregoing activities; or"

Section 13. Amend §2010(3), Title 30 of the Delaware Code, and by adding to said subsection new paragraphs h. and i. to read as follows:

"h. Any activity more than 50% of whose annual gross receipts are derived from the sale at wholesale of computer software other than custom software by the developer of such software.

i. Telecommunications services which, for purposes of this chapter, shall mean the administration, supervision, maintenance, repair and deployment of the physical infrastructure associated with the provision of telecommunications services, including but not limited to, the receipt of requests for service and the dispatch of repair and maintenance personnel; the coordination, installation and record activity for the initiation of telecommunication services, including the installation of equipment; the maintenance of records and operations information regarding a telecommunications system or network; engineering and construction services related to the deployment of infrastructure for a telecommunications system or network."

Section 14. Amend §2010(3), Title 30 of the Delaware Code, by striking the reference "g." as it appears in redesignated paragraph k. of said subsection and substituting in lieu thereof the reference "j."

Section 15. Amend §2011(a), Title 30 of the Delaware Code, by striking the phrase "Title 26" as it appears in said subsection and substituting in lieu thereof the

phrase "Title 26, unless such public utility is a provider of telecommunications services as described in §2010(3) of this title".

Section 16. Amend §2011(b), Title 30 of the Delaware Code, by adding to said subsection a new paragraph (3) to read as follows:

"(3) In the case of a qualified facility used in connection with the qualified activity described in §2010(3)i., the amount of the credit allowable under subsection (a) of this section with respect to such a facility for each of the taxable years falling within the ten-year life of such credit shall be determined by the application of paragraphs (1) and (2) of this subsection, except that:

i. The amount of investment required per qualified employee for purposes of credits determined under paragraph (1) of this subsection shall be \$15,000 rather than \$40,000, and the amount of minimum required investment determined under subsection (a) of this section shall be \$750,000 rather than \$200,000;

ii. No amount of investment may be included in any of the calculations required under paragraphs (2) or (3) of this subsection unless the taxpayer has elected that any such amount of investment shall not be also considered in determining the extent to which the taxpayer has satisfied any obligation it might have under 26 Del.C. §711; and

iii. The minimum number of qualified employees required for purposes of credits determined under paragraph (1) of this subsection shall be 50 rather than 5, provided further that such 50 qualified employees shall be in addition to the number of qualified employees employed by the taxpayer within this State as of December 31, 1996, and no credit shall be allowed under paragraph (2) of this subsection until the taxpayer shall have employed at least 50 qualified employees in addition to the number of qualified employees employed within this State as of December 31, 1996."

Section 17. Amend §2011(k)(2), Title 30 of the Delaware Code, by adding after the words "activity of" and before the word "manufacturing" as they appear in said paragraph the words and punctuation "aviation services," and by adding after the phrase "respectively in" and before the reference "§2701(2)" as they appear in said paragraph the reference and punctuation "§2010(3)j.,".

Section 18. Amend §2012(a), Title 30 of the Delaware Code, by deleting the words and numbers "2903 or 2904" as they appear in said subsection and substituting in lieu thereof the words and numbers "2903, 2904 or, in the case of an activity described in § 2010(3)j., 2905".

Section 19. Amend §2012(c), Title 30 of the Delaware Code, by adding after the phrase "set forth in §2902(c)(4)" and before the word "of" immediately following such phrase the phrase "and §2905(h)".

Section 20. Amend §2022(a), Title 30 of the Delaware Code, by deleting the words and numbers "2903 or 2904" and substituting therefor the words and numbers "2903, 2904 or, in the case of an activity described in §2010(3)j., 2905".

Section 21. Amend §2022(c), Title 30 of the Delaware Code by deleting the phrase "§§2902(c)(1),(3) and (5) and 2702(b)(1) and (3)" and substituting in lieu thereof the phrase: "§§2902(c)(1),(3) and (5); 2702(b)(1) and (3); in the case of an activity described in §2010(3)j., 2905(b)(1) and (3); and ".

Section 22. Amend §2010(3)d., Title 30 of the Delaware Code by striking the letters and punctuation "a.-g." as they appear in said paragraph and substitute in lieu thereof the letters and punctuation "a.-j."

Section 23. If any provision of this Act or the application thereof to any person or circumstance is held *invalid*, such *invalidity* shall not affect other provisions or applications of the Act which can be given effect without the *invalid* provision or application, and to that end the provisions of this Act are declared severable.

Section 24. Sections 12, 14, 17, 18, 19, 20, 21, 22, and 23 of this Act shall be effective with respect to property placed in service after June 30, 1996, and before January 1, 2002. All other provisions of this Act shall be effective with respect to property placed in service after December 31, 1996, and before January 1, 2002.

Approved July 11, 1996

## CHAPTER 488

## FORMERLY

## HOUSE BILL NO. 716

## AN ACT TO AMEND CHAPTER 5, TITLE 4 OF THE DELAWARE CODE RELATING TO TAXES ON SPIRITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 581 (a)(3), Chapter 5, Title 4 of Delaware Code by striking said paragraph in its entirety and substituting in lieu thereof a new paragraph (3) to read as follows

"(3) For each gallon of spirits containing 25 percent or less of ethyl alcohol by volume, \$2.50;"

Section 2. Amend § 581 (a)(4), Chapter 5, Title 4 of Delaware Code by striking said paragraph in its entirety and substituting in lieu thereof a new paragraph (4) to read as follows

"(4) For each gallon of spirits containing more than 25 percent of ethyl alcohol by volume, \$3.75;"

Section 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application.

Section 4. This Act shall apply to all spirits purchased and received from any manufacturer or importer on or after January 2, 1997. Section 1 and Section 2 of this Act shall apply to floor stock or inventories purchased and received by licensed Delaware importers on or after November 1, 1996, and which are resting in the State of Delaware on January 2, 1997. A tax credit shall be applied on such floor stock or inventories equal to the difference between the amount of the tax already paid on such floor stock or inventories and the decreased amount of tax specified in this Act. The tax credit shall apply only in the 1997 tax year, and no carryover of the credit to future years shall be permitted. The tax credit claimed shall be reported in accordance with Commission and Division of Revenue rules and regulations. The Commission and the Director of Revenue shall be authorized to promulgate regulations having the force and effect of law to provide for the implementation and enforcement of the provisions of this Act.

Section 5. The tax rate reductions established in Section 1 and Section 2 of this Act shall expire on December 31, 1999, unless the Commission, through the adoption of a rule, determines that it has been affirmatively shown that the tax rate reductions set forth in this Act have resulted in a corresponding reduction in retail prices for consumers. Such order shall be ineffective unless it is accompanied by express findings of fact supporting the Commission's determination.

Approved July 11, 1996

CHAPTER 489  
FORMERLY  
HOUSE BILL NO. 678

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE, RELATING TO GROSS RECEIPTS AND USE TAXES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Designate § 2120 of Title 30 of the Delaware Code as subsection (a) thereof.

Section 2 Amend § 2120, Title 30 of the Delaware Code, by adding to said section a new subsection (b) to read as follows.

"(b) 'Gross receipts' (and, in the case of Chapter 43 of this title, 'rent' and 'lease rental payments') shall not include amounts received from a related entity. Entities are related whenever 1) more than eighty percent (80%) in value of the stock, partnership interests, beneficial trust interests or other ownership interests of each entity is owned directly, indirectly, or beneficially by the same five or fewer individuals; or 2) one hundred percent (100%) of each entity is owned by a member or members of one family. "Family" for purposes of this section shall mean those individuals specified in paragraphs (1), (2) and (3) of § 1322 of Title 30 of the Delaware Code or such successor section as Class A, B or C beneficiaries of a decedent. For purposes of determining ownership interest of five or fewer individuals (and not members of a family), ownership of stock, partnership interests, trust beneficial interests, or other ownership interests shall be determined in accordance with the attribution rules set out in § 544(a) of the Internal Revenue Code of 1986 (26 U.S.C. § 544) or successor section."

Section 3 Amend § 2301(d)(1), Title 30 of the Delaware Code, by deleting the words "shall be treated as one, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 4 Amend § 2301(d)(2), Title 30 of the Delaware Code, by deleting the words "shall be treated as 1, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 5 Amend § 2502(c)(1), Title 30 of the Delaware Code, by deleting the words "shall be treated as one and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 6 Amend § 2502(c)(2), Title 30 of the Delaware Code, by deleting the words "shall be treated as 1, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 7 Amend § 2702(b)(1), Title 30 of the Delaware Code, by deleting the words "shall be treated as 1, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 8 Amend § 2702(b)(2), Title 30 of the Delaware Code, by deleting the words "shall be treated as 1, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 9. Amend § 2902(c)(1), Title 30 of the Delaware Code, by deleting the words "shall be treated as 1, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 10. Amend § 2902(c)(2), Title 30 of the Delaware Code, by deleting the words "shall be treated as 1, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 11. Amend § 2903(c)(1), Title 30 of the Delaware Code, by deleting the words "shall be treated as one and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 12. Amend § 2903(c)(2), Title 30 of the Delaware Code, by deleting the words "shall be treated as 1, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 13. Amend § 2904(c)(1), Title 30 of the Delaware Code, by deleting the words "shall be treated as one and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 14. Amend § 2904(c)(2), Title 30 of the Delaware Code, by deleting the words "shall be treated as 1, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 15. Amend § 2905(b)(1), Title 30 of the Delaware Code, by deleting the words "shall be treated as 1, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 16. Amend § 2905(b)(2), Title 30 of the Delaware Code, by deleting the words "shall be treated as 1, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 17. Amend § 2906(c)(1), Title 30 of the Delaware Code, by deleting the words "shall be treated as 1, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 18. Amend § 2906(c)(2), Title 30 of the Delaware Code, by deleting the words "shall be treated as 1, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 19. Amend § 2907(c)(1), Title 30 of the Delaware Code, by deleting the words "shall be treated as one and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 20. Amend § 2907(c)(2), Title 30 of the Delaware Code, by deleting the words "shall be treated as 1, and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 21. Amend § 4305(b), Title 30 of the Delaware Code, by deleting the words "shall be treated as one and" as the same appear after the word "control" and before the word "shall" as the same appear in the third sentence of said section.

Section 22. Sections 1 and 2 of this Act shall be effective for taxable periods beginning on or after January 1, 1997. Sections 3 through 21 clarify existing law and relate back to the effective date of the original provisions they amend.

Section 23. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Approved July 11, 1996

CHAPTER 490

FORMERLY

HOUSE SUBSTITUTE NO. 1

FOR

HOUSE BILL NO. 484

AS AMENDED BY HOUSE AMENDMENT NO. 1 AND SENATE AMENDMENT NO. 2

AN ACT TO AMEND CHAPTER 47, TITLE 15 OF THE DELAWARE CODE RELATING TO THE APPOINTMENT OF ELECTION OFFICERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4701(a), Title 15, Delaware Code, by striking the second sentence of subsection (a) in its entirety and inserting in lieu thereof the following:

“The department shall appoint all election officers, including clerks, from these lists; provided, however, that if the lists are not filed with the departments by February 1 or if the number of names submitted are not sufficient, the department shall select, notwithstanding subsections (b)(1) and (b)(2) of this section, some qualified person or persons shown on its records to be registered to vote in the election district (or in the absence of such persons, the representative district), provided that no more than a bare majority of such persons are members of the same political party.”

Approved July 11, 1996

## CHAPTER 491

## FORMERLY

HOUSE BILL NO. 431  
 AS AMENDED BY HOUSE AMENDMENT NOS. 1, 2 AND 3 AND  
 SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 10, TITLE 14, DELAWARE CODE, RELATING TO REORGANIZATION OF SCHOOL DISTRICTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1028(k)(12), Title 14, Delaware Code by striking it in its entirety and by substituting in lieu thereof the following:

"The boundaries of school districts divided according to this subsection shall be established in accordance with § 1066A of this title."

Section 2. Amend § 1066, Title 14, Delaware Code by striking subsection (e) in its entirety.

Section 3. Amend Chapter 10, Title 14, Delaware Code by adding thereto a new §1066A to read as follows:

"§ 1066A. Elections to the School Boards of the Brandywine School District, the Christina School District, the Colonial School District and the Red Clay Consolidated School District,

(a) Notwithstanding anything contained in this chapter to the contrary, members of the School Boards of the Brandywine School District, the Christina School District, the Colonial School District and the Red Clay Consolidated School District shall be elected by the procedures described herein. Elections shall be conducted in accordance with

§§1071-1085 of this title, provided, however, that:

(1) The number of members for each of the School Boards of the Brandywine School District, the Christina School District, the Colonial School District and the Red Clay Consolidated School District shall be seven (7).

(2) The term of office for members of the School Boards of the Brandywine School District, the Christina School District, the Colonial School District and the Red Clay Consolidated School District shall be five (5) years. All terms shall end on June 30 and the terms shall be staggered so that no more than two terms in any school district ends on any June 30. Any vacancy shall be filled for the remainder of the unexpired term.

(3) The Brandywine School District, the Christina School District, the Colonial School District and the Red Clay Consolidated School District (the "Districts") each shall be divided into seven (7) nominating districts to be denominated districts A through G and to be denominated on the basis of their geographical proximity (i.e., district A shall be as contiguous as practicable with district B and so forth).

(4) Candidates for the School Boards of the Brandywine School District, the Christina School District, the Colonial School District and the Red Clay Consolidated School District shall be nominated in accordance with §1075 of this title, except that a nominee must be a resident of the nominating district for the seat he or she seeks.

(5) A nominating petition in support of any nominee for a representative district seat may be signed by any resident of that nominating district qualified to vote in the election.

(6) All members of the School Boards of the Brandywine School District, the Christina School District, the Colonial School District and the Red Clay Consolidated School District shall be elected by the qualified voters of the respective Districts. To vote in a district election, a voter must be qualified pursuant to §1077 of this chapter. No voter may vote for more than one candidate.

(b) The nominating districts shall be drawn by the State Election Commissioner, subject to the approval of the County Board of Election and the State Board of Education. On or before January 1, 2002, the Commissioner shall draw the seven (7) districts for each of the Brandywine School District, the Christina School District, the Colonial School District and the Red Clay Consolidated School District so that the nominating districts shall encompass an area in which approximately one-seventh (1/7) of the total population of each District is resident. Each representative district shall, insofar as is possible: (i) be formed of contiguous territory; (ii) be nearly equal in population; (iii) be bounded by major roads, streams or other natural boundaries; and (iv) not be created so as to unduly favor any person. The data base for the determination of population in residence shall be census data from the United States Census of 2000. The Controller General's Office shall provide the Election Commissioner with its assistance upon the request of the Commissioner.

(1) Not later than the 1st day of January of the year ending in two (2) in each subsequent decade (e.g., 2012), the Commission shall reapportion the school board nominating districts using the most recent United States census data so that the nominating districts are reapportioned in time for the elections beginning in the next year. The subsequent reapportionments shall comply, insofar as possible, with the criteria identified in subsection (b) of this section.

(2) The Commissioner shall also establish for each District the sequence in which elections held pursuant to this section shall occur. To the extent consistent with the redistricting criteria set forth in subsection (b) of this section, the Commissioner shall endeavor to designate the new nominating districts and to sequence the elections so that the elections for particular nominating district seats occur in the year of the expiration of the terms of the incumbent board member(s) whose nominating district(s) prior to the most recent reapportionment most closely conform to the newly reapportioned nominating district(s).

(3) The Commissioner shall, in addition to drawing the nominating districts, establishing the sequence for elections, and reapportioning the nominating districts each decade, act as a continuing advisory resource for the Brandywine School District, the Christina School District, the Colonial School District and the Red Clay Consolidated School District in implementing the election system established by this section. The Commissioner may propose such recommendations as it deems necessary to ensure fair and efficient school board elections in the Brandywine School District, the Christina School District, the Colonial School District and the Red Clay Consolidated School District."

Section 3. Terms of Seated Members Not Affected. Notwithstanding this Act, each seated member of the School Boards of the Brandywine School District, the Christina School District, the Colonial School District and the Red Clay Consolidated School District as of January 1, 2002 shall serve the remainder of his or her term of office.

Section 4. Effective Date. Sections 1 and 2 of this Act shall become effective January 1, 2002. The provisions of Section 3 of this Act shall become effective on the date of enactment provided, however, that the current nominating districts and Delaware Code provisions shall be used for elections until the elections to be held in May of 2002.

Approved July 11, 1996

## CHAPTER 492

## FORMERLY

HOUSE BILL NO. 410  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 29, DELAWARE CODE, RELATING TO STATE GOVERNMENT ACCOUNTABILITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 29 of the Delaware Code, by adding a new chapter to read as follows:

"CHAPTER 105. THE DELAWARE GOVERNMENTAL ACCOUNTABILITY ACT.

§10501. Short title.

This chapter may be cited as the Delaware Governmental Accountability Act.

"§10502. Purpose

(a) The General Assembly believes that it is desirable to gather additional program information in order to make better informed policy decisions on statewide programs and services.

(b) The General Assembly further believes that the development of performance measures and standards for governmental programs will result in a more efficient and effective allocation and utilization of state resources.

(c) The purpose of this Act shall be to enable the Budget Director to assist the General Assembly in reviewing the appropriate information and documentation by agencies and the Budget Office for distribution to the Joint Finance Committee.

(d) The Budget Director and the Controller General shall work in concert to revise budget documents to include the following:

- (i) A comprehensive mission statement inclusive of the major functions and operations of the agency;
- (ii) A performance measure for each Internal Program Unit;
- (iii) An organizational chart for each department;
- (iv) A section in the budget book detailing an agency's background and accomplishments; and
- (v) A section in the budget book describing the link between the proposed allocation of services and what programs and/or services the agency will be able to accomplish.

§ 10503. Budget Products

(a) No later than January 30 of each year, the Budget Director will submit annual budget documents and supporting information inclusive of the recommended additions detailed above.

(b) The Secretary or Director of each agency shall discuss the mission statement, performance measures and funding requests with the General Assembly's Joint Finance Committee Budget Hearing."

Approved July 11, 1996

CHAPTER 493

FORMERLY

SENATE BILL NO. 259  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO  
COMPENSATION OF THE NEW CASTLE COUNTY EXECUTIVE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend §1113 of Chapter 11, Title 9 of the Delaware Code by deleting the section in its entirety and by substituting in lieu thereof the following:

"The annual salary of the County Executive shall not be less than \$67,000 and may be changed by ordinance."

Approved July 11, 1996

CHAPTER 494

FORMERLY

SENATE BILL NO. 397

AN ACT TO AMEND CHAPTER 13 OF TITLE 18 OF THE DELAWARE CODE RELATING  
TO DOMESTIC INSURANCE COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend §1305(6), Chapter 13, Title 18 of the Delaware Code by adding after the words "no investment in a single person other than" as they appear in the third sentence the following words: "an investment deemed eligible under §1302(b) or".

Approved July 11, 1996

## CHAPTER 495

## FORMERLY

## HOUSE BILL NO. 715

## AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE, RELATING TO PERSONAL INCOME TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1106(b), Title 30 of the Delaware Code by striking the period [.] at the end of paragraph (7), by inserting a semicolon [;] in its place, and by adding a new paragraph to read:

“(8) (A) Distributions received from qualified retirement plans as defined in § 4974 of the Internal Revenue Code (“IRC”), cash or deferred arrangements described in § 401(k) of the IRC, and governmental deferred compensation plans described in § 457 of the IRC, to the extent such distributions are applied within the tax year of the distributions for books, tuition, or fees at an institution of higher education attended by the person, or by any of the person’s dependents who have not attained the age of twenty-six, so long as such amounts received have been included in the person’s federal adjusted gross income.

(B) For the purposes of this paragraph, an institution of higher education is a school which:

(i) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) Is legally authorized in this or another State to provide a program of education beyond high school; and

(iii) Provides an educational program for which it awards a bachelor’s or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies or a program of training to prepare students for gainful employment in a recognized occupation.”

Section 2. This Act shall be effective for tax years commencing after December 31, 1995.

Approved July 11, 1996

CHAPTER 496  
FORMERLY  
HOUSE SUBSTITUTE NO. 1

TO

HOUSE BILL NO. 437

AN ACT TO AMEND CHAPTER 9, TITLE 7, DELAWARE CODE, RELATING TO  
COMMERCIAL FOOD FISHING LICENSE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE (Two-thirds of all members elected to each house thereof concurring  
therein):

Section 1. Amend §914, Title 7, Delaware Code, by striking subsection (b) in its entirety.

Section 2. Amend §915(a), Title 7, Delaware Code, by striking said subsection in its  
entirety and substituting in lieu thereof the following:

“(a) A valid food fishing equipment permit issued by the Department is required  
before any individual shall: fish for food fish in the tidal waters of this State with the  
fishing equipment specified in subsection (b) of this Section; or sell, trade and/or barter  
food fish caught or taken with hook and line. Exceptions to the foregoing may be made  
as authorized by this Chapter or by scientific permit issued by the Director. The  
Department shall not charge a fee for a food fishing equipment permit for hook and line.”

Section 3. Amend §915, Title 7, Delaware Code, by adding thereto new subsections (k),  
(l), (m) and (n) to read as follows:

“(k) The Department shall only issue food fishing equipment permits for hook  
and line to persons who make application for such permits in calendar year 1996, and  
who, prior to April 2, 1995, had been issued a commercial food fishing license. Food  
fishing equipment permits for hook and line shall be renewed annually thereafter, subject  
to the payment of license fees, and if not so renewed, such permits shall not thereafter be  
eligible for renewal. To qualify for the annual renewal, the permit holder shall have filed  
monthly reports as required by §914 (6) of this Title for the previous year that indicate at  
least 100 pounds of food fish were caught during a particular month and sold, traded  
and/or bartered to or by a person with a valid wholesaler, retailer or restaurant license  
issued in accordance with Chapter 29 of Title 30. Copies of receipts that are dated and  
signed by the permit holder and the person with the valid wholesaler, retailer or restaurant  
license shall be attached to the monthly report as certification of the sale, trade and/or  
bartering of the 100 pounds of food fish caught by the permit holder.

(l) Notwithstanding subsection (k) of this Section, when the total number of food  
fishing equipment permits for hook and line drops to 80 or below as of April 2 of any  
year, the Department shall schedule a lottery to take place prior to April 30 of that year to  
allow the total number of hook and line permit holders to increase to 100.

(m) It shall be unlawful for food fishing equipment other than hook and line and  
dip nets to be on board a vessel when a person is commercially fishing with hook and line  
from said vessel.

(n) A food fishing equipment permit for hook and line shall be deemed invalid  
when the holder thereof is on board a vessel with more than one other person who does  
not possess a food fishing equipment permit for hook and line.”

Section 4. Within 30 days after the day this Act becomes law, the Department shall send  
a written notice to that effect to all persons at their last known address by the Department who,

prior to April 2, 1995, had been issued a commercial food fishing license, to inform them of their eligibility for a food fishing equipment permit for hook and line.

Section 5. Notwithstanding the provisions of subsection §914(5) and subsection §915(e), the Department shall have 90 days after the day this Act becomes law to issue commercial food fishing licenses and food fishing equipment permits.

Approved July 11, 1996

## CHAPTER 497

### FORMERLY

#### SENATE BILL NO. 407

#### AN ACT TO AMEND TITLE 6, DELAWARE CODE, RELATING TO MOTOR VEHICLE FRANCHISING PRACTICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4913(b), Title 6, Delaware Code, by striking the words "licensed under this chapter" immediately following the word "manufacturer" in the first sentence of said subsection (b).

Section 2. Amend §4913(b)(2), Title 6, Delaware Code, by adding the words "any matters relating to" immediately following the words "handling the same line make" and by adding the following words at the end of said subsection (b)(2) "including, without limitation, matters related to establishment or relocation of dealers under §4915 (but with appropriate exclusion of financial information not essential to a complete understanding of the manufacturer's manner and mode of distribution)."

Section 3. Amend §4913(b)(5), Title 6, Delaware code, by adding the words "(including, without limitation, provisions of this Chapter 49)" following the words "or as otherwise required by law".

Section 4. Amend §4915(b)(2), Title 6, Delaware Code, by deleting the word "licensed" following the word "former" and by adding the following at the end of said subsection (b)(2) "Determination of whether a new motor vehicle dealer 'had ceased operating' under the preceding sentence shall be based on the facts and circumstances of a particular case, provided however, that in transactions involving a sale of the business or assets of a new motor vehicle dealer, the seller and purchaser shall be treated as the same entity."

Approved July 12, 1996

## CHAPTER 498

## FORMERLY

## HOUSE BILL NO. 451

## AS AMENDED BY HOUSE AMENDMENT NOS. 1 &amp; 2

AN ACT TO AMEND CHAPTER 16, TITLE 19, DELAWARE CODE, RELATING TO FIREFIGHTING AND RESCUE SQUAD WORKERS FROM BEING PAID OVERTIME COMPENSATION WHEN THEY VOLUNTEER THEIR SERVICES WITHIN THE VARIOUS COMMUNITIES.

WHEREAS, such services are at a risk because of a recent ruling by the U. S. Department of Labor barring professional firefighters and rescue squad workers from volunteering their services; and

WHEREAS, the 1993 ruling held that professional firefighters and rescue workers could not volunteer their services without those services being considered compensable under the Fair Labor Standards Act (FLSA); and

WHEREAS, the impact of the decision will have far reaching effects on a number of communities who do not have sufficient revenue to sustain and support full time professional fire and rescue services; and

WHEREAS, the Department of Labor's decision represents yet another unfunded federal mandate and an intrusion on the right of citizens to decide for themselves what services local governments should provide; and

WHEREAS, this legislation, which has been endorsed by the National Volunteer Fire Council, will permit professional firefighters and rescue squad workers to volunteer their off duty services at locations where they are either employed or are not employed by exempting them from the FLSA overtime provisions; and

WHEREAS, secondly, the legislation will allow such individuals to waive their claim to overtime compensation by signing a legally binding waiver; and

WHEREAS, thirdly, the legislation will prohibit employers from directly or indirectly requiring firefighters or rescue squad workers to volunteer their services during any period in which they would otherwise be entitled to receive overtime compensation.

NOW, THEREFORE;

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 16, Title 19, Delaware Code, by designating §1601 through §1618 as Subchapter I, and inserting a new Subchapter II to read as follows:

"Subchapter II. Volunteer Firefighter and Rescue Squad Worker Protection Act

§1621. Definitions

As used in this Subchapter the term 'employee' shall not include a firefighter or a member of a rescue squad during the period in which the firefighter or rescue squad member volunteers the firefighter's or member's services at a location where the firefighter or member is either employed or is not then or regularly employed.

§1622. Waiver of Overtime Compensation

The employer of a firefighter or member of a rescue squad shall not be required to pay a firefighter or member overtime compensation:

(1) when the firefighter or member volunteered their services to the employer; and

(2) for which the firefighter or member signed a legally binding waiver of such compensation.

§1623. Coercion

No employer may require directly or indirectly an employee who is a firefighter or member of a rescue squad to volunteer the employee's firefighting or rescue squad services during any period in which such employee would be entitled to receive compensation for overtime employment."

Section 2. This Act shall become effective upon enactment of comparable federal law.

Approved July 12, 1996

## CHAPTER 499

## FORMERLY

HOUSE BILL NO. 494  
AS AMENDED BY SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 7, DELAWARE CODE RELATING TO THE DELAWARE  
POLLUTION PREVENTION PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend the chapter title, and § 7801, Title 7, Delaware Code, by striking the phrase "Waste Minimization/Pollution Prevention Act" and substituting in lieu thereof the phrase "Pollution Prevention Act".

Section 2. Amend § 7802(b)(1), § 7802(b)(1)b and § 7803(2), Title 7, Delaware Code, by striking the phrase "Waste Minimization/Pollution Prevention" and substituting in lieu thereof the phrase "Pollution Prevention".

Section 3. Amend § 7802(b)(1)c, § 7804(b)(1)c, and § 7804(b)(2)c, Title 7, Delaware Code, by striking said subsections in their entirety.

Section 4. Amend § 7803, Title 7, Delaware Code, by striking subsections 7803(5) and (9) and adding thereto a new section 7803(5) to read as follows:

"'Pollution Prevention' means any practice which:

(a) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(b) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

The term 'pollution prevention' does not include any practice which alters the physical, chemical, or biological characteristics of the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service."

Section 5. Amend § 7804, § 7804(b)(1), § 7804(b)(1)b, § 7804(b)(2)a.2, § 7804(b)(2)b, § 7804(b)(2)b.1 and § 7804(c), Title 7, Delaware Code, by striking all uses of the term "waste minimization".

Section 6. Amend § 7804(b)(2)a.1 by striking the phrase "multi-media opportunity audit program" and substituting in lieu thereof the phrase "multimedia waste reduction assistance program".

Approved July 12, 1996

CHAPTER 500  
FORMERLY  
SENATE SUBSTITUTE NO. 1

TO

SENATE BILL NO. 358

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO FISHING EQUIPMENT

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §931, Title 7, Delaware code by adding thereto a new subsection (g) to read as follows:

“(g) In the event a person with a commercial food fishing license and a food fishing equipment permit for gill nets is disabled and unable to deploy or set his or her gill nets, the person shall be issued a written permit by the Department authorizing his or her spouse, child or grandchild to deploy or set said person’s gill nets for a period to be specified by the physician who certifies the disability. Such persons shall be limited during their lifetime to a total of 2 years during which their gill nets may be set or deployed by a spouse, child and/or grandchild. For purposes of this subsection, the term ‘disabled’ shall mean a person certified in writing by a licensed medical physician in Delaware to be temporarily unable to perform the substantial and material duties associated with the setting or deploying of gill nets based upon medical evidence.”

Approved July 12, 1996

CHAPTER 501  
FORMERLY  
SENATE BILL NO. 439

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO ISSUING A BAD CHECK.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 900, Title 11, Delaware Code by designating existing § 900 as § 900(a) and inserting as new § 900(b) the following:

“(b) The failure of any business or other commercial entity, prior to the completion of a transaction (other than a transaction by mail) for which a check is accepted in person by the payee as consideration for goods or services provided by the payee, to (1) request and inspect the person’s valid driver’s license or other photo identification card, which lists the person’s name, address, date of birth and approximate height and weight, to validate the identify of the person presenting the check; and (2) record on the check being presented, the person’s name, driver’s license number, if such person has a driver’s license, date of birth, and address, may result in the refusal of a law enforcement agency to investigate violations of subsection (a) of this section.”

Approved July 12, 1996

CHAPTER 502

FORMERLY

HOUSE BILL NO. 505

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE WEARING OF HUNTER ORANGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (two-thirds of all members elected to each house thereof concurring therein):

Amend § 725(b), Title 7 of the Delaware Code by striking the word "deer" as it appears between the words "hunting" and "in" and substituting in lieu thereof the phrase "any wildlife except migratory game birds".

Approved July 12, 1996

CHAPTER 503

FORMERLY

HOUSE BILL NO. 647

AN ACT TO AMEND CHAPTER 70, TITLE 21 OF THE DELAWARE CODE RELATING TO FIRE LANES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 70, § 7001, Title 21, of the Delaware Code by deleting subsection (a) thereof and inserting in lieu thereof the following:

"(a) No person shall stop, stand or park a vehicle in any place which has been designated and properly identified as a fire lane wherever a curb is marked yellow or a yellow line is placed at the edge of a roadway or shoulder and where official traffic control devices prohibit stopping, standing or parking or in an area designated for a fire hydrant, standpipe or sprinkler connection, except in compliance with the directions of a police officer or traffic control device."

Approved July 12, 1996

## CHAPTER 504

## FORMERLY

HOUSE BILL NO. 426  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 31 AND CHAPTER 48, TITLE 25 OF THE DELAWARE CODE RELATING TO FEDERAL LIENS; AND PROVIDING FOR A UNIFORM FEDERAL LIEN REGISTRATION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend Chapter 31 and Chapter 48, Title 25 of the Delaware Code by striking each chapter in its entirety, and substituting in lieu thereof the following:

“CHAPTER 31 REGISTRATION OF FEDERAL LIENS

§3101. Federal Tax Liens and Liens Notices

This Chapter applies to Federal tax liens, and also to other federal liens notices of which under any Act of Congress or any regulations drafted pursuant thereto, are required or permitted to be filed in the same manner as notices of federal tax liens.

§3102. Place of Filing

(a) Notices of liens, certificates, and other notices affecting federal liens must be filed in accordance with this Chapter.

(b) Notices of liens upon real property for obligations payable to the United States and certificates, and notices affecting such liens, shall be filed in the office of the Recorder of Deeds of the county or counties in which the real property subject to the liens is situated.

(c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens, shall be filed as follows:

(1) If the person against whose interest the lien applies is a corporation or partnership whose principal executive office is in this State, as these entities are defined in the internal revenue laws of the United States, in the office of the Secretary of State;

(2) If the person against whose interest the lien applies is a trust that is not covered by paragraph (1), in the office of the Secretary of State;

(3) If the person against whose interest the lien applies is the estate of a decedent, in the office of the Secretary of State.

(4) In all other cases, in the office of the Recorder of Deeds of the county or counties where the person, against whose interest the lien applies, resides at the time of filing of the notice of lien.

§3103. Execution of Notices and Certificates

Certification of notices of liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entities them to be filed, and no other attestation, certification, or acknowledgment is necessary.

§3104. Duties of Filing Officer

(a) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate in subsection (b) is presented to a filing officer who is,

(1) the Secretary of State, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of Section 9-403(4) of Title 6 (Uniform Commercial Code) as if the notice were a financing statement within the meaning of that Code; or

(2) any other officer described in §3102, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically, or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(b) If a certificate of release, non-attachment, discharge, or subordination of any lien is presented to the Secretary of State for filing he shall

(1) cause a certificate of release or non-attachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, but the notice of lien to which the certificate relates may not be removed from the files; and

(2) cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(c) If a refiled notice of federal lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing to any other filing officer specified in §3102, he shall permanently attach the refiled notice or the certificate to the original notice of lien and enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered

(d) Upon the request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien, or certificate, or notice affecting any lien under this chapter, naming a particular person; and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is ten dollars (\$10.00). Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien, for a fee of one dollar (\$1.00) per page

### §3105 Fees

(a) The fee for filing and indexing each notice of lien, or certificate or notice affecting the lien, is

(1) for a lien on real estate, twenty dollars (\$20.00);

(2) for a lien on tangible and intangible personal property, ten dollars (10.00);

(3) for a certificate of discharge or subordination, five dollars (\$5.00);

(4) for all other notices, including a certificate of release or non-attachment, three dollars (\$3.00).

(b) The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them."

Section 2. This Act may be cited as the *Uniform Federal Lien Registration Act*.

Approved July 12, 1996

## CHAPTER 505

## FORMERLY

SENATE BILL NO. 444  
AS AMENDED BY SENATE AMENDMENT NO. 1 AND  
HOUSE AMENDMENT NO. 1

## AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO ELECTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §101 of Title 15 of the Delaware Code by adding a new subsection "(23)" to read as follows:

"(23) 'Election District Record' shall no longer mean the binders which contain, among other information, voter registration record (sometimes referred to as 'Blues') and shall hereafter mean the electronic records or the print out reflecting said electronic records as designated by the respective County Department of Elections."

Section 2. Amend § 1302(a) of Title 15 of the Delaware Code by deleting the second paragraph in its entirety. Further amend § 1302 of Title 15 of the Delaware Code by deleting subsections (b), (c), and (d).

Section 3. Amend §4937 of Title 15 of the Delaware Code by deleting said section in its entirety and replacing said section with the following:

"(a) A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity, whereupon the clerks shall place a mark or make a notation of his or her name upon the Election District Record. In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the Election District Record.

(b) If it appears that the voter is properly registered, an election officer shall hand to the voter a voter signature card which the voter shall sign. In the event that the voter is unable to sign a voter signature card for any reason the election officer shall sign the voter's name on the voter signature card and the election officer's name and make note that the voter is unable to personally sign the card.

(c) In the event of a challenge as to the identity of the voter or residency of the voter, the voter's right to vote shall be determined by a majority vote of the inspector and the 2 judges of the election. In the event that the voter is not permitted to vote, the voter's signature card shall be marked "not permitted to vote" and signed by 2 election officers and shall be forwarded to the department at the same time and in the same manner as other voter signature cards are sent to the department.

(d) If the voter is not challenged or if a challenge is decided in the voter's favor, 1 of the election officers to be stationed at the entrance of the voting machine shall announce the name of the voter and permit the voter to pass through the entrance to the booth of the voting machine for the purpose of casting the voter's vote. No voter shall remain in the voting machine longer than 3 minutes, unless for good and sufficient reason the voter be granted a longer period of time by the election officers in charge. When the voter has cast their vote, the voter shall at once leave the room. If the voter refuses to leave after a reasonable period, they shall be removed by the election officers. No voter, after having entered and emerged from the voting machine booth shall be permitted to enter the voting machine booth. No voter shall hold any conversation or communicate with any other person than an election officer while in the voting room, except as otherwise provided in this title.

(e) The rest of this title notwithstanding, any voter permitted to enter the voting machine may be accompanied by 1 of his or her children or wards of not more than 14 years of age. Any challenge as to the relationship of the voter to the child and/or the age of the child shall be resolved by the voter signing an affidavit (which shall be prepared by the Election Commissioner) that he or she is the parent or guardian of the child in question and/or that the child is not more than 14 years of age."

Section 4. Amend §5515 of Title 15 of the Delaware Code by deleting the phrase "by comparing the voter's signature upon the voucher envelope with the signature of the voter appearing in the Election District Record," as found in the first sentence of said section and replacing said phrase with the phrase "whose name shall appear on the Election District Record".

Section 5. Amend §5515 of Title 15 of the Delaware Code by deleting the phrase "clerks shall enter the name and address of the absentee voter on the poll lists" and replace said phrase with the phrase "clerks shall mark or make a notation that the absentee voter has voted on the Election District Record".

Section 6. Amend §4981 of Title 15 of the Delaware Code by deleting subsection "(a)" in its entirety and replacing said subsection with the following:

"(a) Immediately following an election the Commissioner of Elections shall take each voter signature card and through electronic means note that the voter participated in the election on the Election District Record."

Section 7. This Bill requires each County Department of Elections to inform the public through the various forms of the media and at demonstrations of the electronic voting machine that a form of identification will be requested of the voter upon entering the polls on election day.

Approved July 12, 1996

## CHAPTER 506

## FORMERLY

## SENATE BILL NO. 468

AN ACT TO AMEND CHAPTERS 31, 45 AND 49, TITLE 15, DELAWARE CODE,  
RELATING TO ELECTRONIC VOTING MACHINES

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §3108, Title 15, Delaware Code, by striking the word "levers" wherever it appears in the second paragraph and replacing it with the word "buttons".

Section 2. Amend §3126, Title 15, Delaware Code, by inserting the words "or Chapter 50A" after the words "Chapter 50"

Section 3. Amend §3171, Title 15, Delaware Code, by striking the first sentence and the first two words of the second sentence in their entirety and replacing them with the following:

"The inspector and judges shall remove the paper tape containing the total vote cast for each candidate from each voting machine in the election district. Each copy of each paper tape"

Section 4. Amend §4502, Title 15, Delaware Code, by adding thereto a new paragraph (e) to read as follows:

"(e) If the number of candidates, offices, and/or parties to be listed on the ballot preclude the layout of a ballot as specified in this section, the Department of Elections shall obtain approval of the Commissioner of Elections to layout the ballot in a manner best suited to the number of candidates, offices, and/or parties eligible to be placed on the ballot."

Section 5. Amend §4508, Title 15, Delaware Code, by striking the paragraphs (a) and (b) in their entirety and replacing them with the following

"(a) The Department shall program the voting machine to produce at least two copies of the paper tape showing the number of votes cast for each candidate on each voting machine.

(b) The paper tape shall show the number of votes cast on the voting machine for each candidate and the paper tape from one voting machine in the election district shall show the number of absentee votes cast for each candidate by eligible voters in the election district.

(c) The absentee vote tally sheet for the election district shall show the number of absentee ballots received, the number rejected and the number counted."

Section 6. Amend §4910(e), Title 15, Delaware Code, by replacing the phrase "election district" with the phrase "unique ballot"

Section 7. Amend §4912, Title 15, Delaware Code, by striking subsections (b) and (c) in their entirety and replacing them with the following:

"(b) The voting machine certificates (2) shall be delivered to the election officers at least three quarters of an hour before the time set for the opening of the polls. Section one (1) of the voting machine certificates shall list the serial number, ballot number, machine case seal number, printer door number, and the protective counter number for each voting machine assigned to the election district. Each election officer shall witness and verify that the numbers listed on the voting machine certificates are the same as the voting machine serial number, machine case seal number, printer door seal number, ballot

number and protective counter number on the voting machine. If a number is different, the inspector shall strike through the number, enter the appropriate correction and initial the entry on each of the certificates. At the completion of this comparison, each election officer shall sign in the appropriate place in section one (1) of each of the voting machine certificates.

(c) The election officers shall observe the opening of the polls procedure for each voting machine assigned to the election district. If the light in the polls ready to open box on the officer's control panel is in any other but the top position prior to the inspector pressing the open polls button, stop the procedure and contact the Department of Elections. The machine cannot be used. If during the opening of the polls procedure, the paper tape shows "error all counters not zero", stop the procedure and contact the Department of Elections. The machine cannot be used. At the conclusion of the open polls procedure for each voting machine assigned to the election district, each election officer signs the paper tape. After the last election officer signs the paper tape, the inspector will close the write-in window."

Section 8 Amend §4932(b), Title 15, Delaware Code, by striking the first sentence in the first paragraph in its entirety and by striking the second and third sentences in the second paragraph in their entirety and replacing them with the following:

"If it shall become necessary for a representative of the Department to open the printer door or to open the printer door and remove the ballot cover and/or ballot in order to repair a voting machine that cannot be repaired otherwise, a statement to that effect shall be entered on the reverse side of each copy of the voting machine certificate. The statement shall be signed by the inspector and the departmental representative. Upon completion of the repair, the inspector shall close and seal the printer door and record the new seal number on the reverse side of the voting machine certificate."

Section 9. Amend §4975, Title 15, Delaware Code by striking said section in its entirety and replacing it with the following

"§4975 Removing the Results from the Voting Machine(s) and Dispatching the Memory Cartridge(s) to the Zone Reporting Station

(a) After the polls have closed and the last voter has finished voting and exited the polling place, the inspector shall verify that each voting machine has been deactivated. The election officers shall then copy the protective counter number from each voting machine assigned to the election district onto section three (3) of each of the voting machine certificate(s).

(b) The election officers shall then enter the absentee vote totals for each candidate into one of the voting machines assigned to the election district and close the polls on said voting machine.

(c) The election officers shall then complete the procedure for closing the polls on every other voting machine assigned to the election district.

(d) After the polls have been closed on a voting machine, the officers shall remove the paper tape containing the results and the memory cartridge from the voting machine.

(e) After the memory cartridge(s) have been removed from each voting machine assigned to the election district, the inspector shall place said memory cartridge(s) into the envelope designated for the memory cartridge(s), and seal the envelope. The inspector shall give the envelope to the election officer assigned to deliver the memory cartridge(s) to the zone reporting station. The inspector shall then enter the date and time in section two (2) of each of the voting machine certificates and direct the said election officer to sign section two (2) of each of the voting machine certificates. The inspector shall then dispatch the said election officer with the envelope containing the memory cartridge(s) to the zone reporting station listed on the envelope containing the memory

cartridge(s). The election officer assigned to take the memory cartridge(s) to the zone reporting station shall depart the polling place immediately and go directly to the zone reporting station listed on the envelope containing the memory cartridge(s). Upon arriving at the said zone reporting station, the said election officer shall give the envelope to a designated representative of the Commissioner of Elections.

(f) After the election officer assigned to deliver the memory cartridge(s) to the zone reporting station has departed the polling place, each remaining election officer shall sign each copy of every paper tape removed from a voting machine assigned to the election district.

(g) After every copy of every paper tape has been signed, the inspector will separate the copies of each tape by cutting at the 'cut here' line. The first copy of each paper tape (the copy with the zero count certification) shall be placed into the Prothonotary envelope and the first extra copy of each tape shall be placed into the Department of Elections Envelope."

Section 10. Amend §4976, Title 15, Delaware Code, by striking subsections (a), (b) and (c) and replacing them with the following:

"(a) After the paper tapes have been separated and placed in envelopes, the inspector shall remove the first copy paper tape(s) (with zero count certification) from the Prothonotary envelope."

Section 11. Amend §4976(d), Title 15, Delaware Code by striking the word "ballot" in the first sentence and replacing it with the phrase "each paper tape" and by striking the phrase "certificate of elections" in the second sentence and replacing it with "write-in vote tally sheet" and by redesignating subsection (d) to subsection (b).

Section 12. Amend §4976(e), Title 15, Delaware Code, by redesignating it subsection (c).

Section 13. Amend §4976(f), Title 15, Delaware Code, by redesignating it subsection (d) and by striking the third sentence and replacing it with:

"The first copy paper tape (with zero count certification) from each voting machine assigned to the election district shall be placed in the envelope and shall be delivered to the Prothonotary."

Section 14. Amend §4977, Title 15, Delaware Code, by striking the phrase "and the certificates of election after the tabulation" in the second sentence and replacing it with ", voting machine certificates and the paper tape with the vote tabulation after tallying".

Section 15. Amend §4978, Title 15, Delaware Code, by striking it in its entirety and replacing it with the following:

"§4978. Securing the Voting Machine, Voting Machine Certificates, and Tally Sheets.

(a) After the write-in votes have been tallied, the inspector shall close the printer door and apply a seal to the printer door for each voting machine assigned to the election district. The inspector shall record the seal number on each of the voting machine certificates.

(b) After placing the curtain, absentee entry device and any other materials designated by the respective Department of Elections in the base of the voting machine, the inspector shall fold up the voting machine and apply a seal to the voting machine case. The inspector shall record the seal number on each of the voting machine certificates. The inspector shall repeat this procedure for each voting machine assigned to the election district.

(c) The election officers present shall sign all copies of the absentee vote tally sheets, write-in vote tally sheets, and section three (3) of the voting machine certificates.

(d) The inspector shall place one copy of the voting machine certificate, absentee vote tally sheet and write-in vote tally sheet in the envelope to be delivered to the Prothonotary and one copy of each of the said documents in the envelope to be delivered to the Department of Elections immediately following the closing of the polling place."

Section 16. Amend §4979(a), Title 15, Delaware Code, by striking it in its entirety and replacing it with the following:

"(a) After the close of the election, the inspector shall deliver the absentee ballot box and an envelope containing the first copy of the paper tape (with 'zero count' certification) from each voting machine in the election district and one copy of the voting machine certificate, absentee vote tally sheet and write-in vote tally sheet, if any, to the Prothonotary of the Superior Court for his/her county. The Prothonotary shall, at 12:00 noon on the second day after the election, present said absentee ballot box and envelope to the court. If the inspector of any election district dies or is prevented by sickness or accident from delivering the above-mentioned items to the Prothonotary the night of election day, the said absentee ballot box and envelope shall be sent by safe and secure conveyance to the Prothonotary on the day following the election, and the inspector, his/her executor, administrators or heirs shall be responsible for such delivery. The same shall apply to all envelopes, documents, poll lists, election records, and supplies which the inspector is obligated to return to the Department of Elections the night of election day."

Section 17. Amend §4979(b), Title 15, Delaware Code, by striking subsection (4) and renumbering subsections (5), (6), (7), and (8) as (4), (5), (6) and (7) respectively and by striking subsection (1) and replacing it with the following:

"(1) An envelope containing one (1) copy of the paper tape with results from each voting machine in the election district and one (1) copy of the voting machine certificate, absentee vote tally sheet, and write-in vote tally sheet."

Section 18. Amend §4980, Title 15, Delaware Code, by striking subsection (a) and redesignating subsections (b) and (c) as subsections (a) and (b) respectively.

Approved July 12, 1996

CHAPTER 507

FORMERLY

HOUSE BILL NO. 714

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PUBLIC UTILITY TAXES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 5506(d), Title 30 of the Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection (d) to read as follows:

"(d) The tax imposed by § 5502 of this title shall not apply to commodities and services furnished to: (1) this State or the United States, or to any of their instrumentalities, agencies (including public school districts, Delaware State University, and Delaware Technical and Community College), or political subdivisions; (2) Delaware Transportation Authority and Delaware Housing Authority; (3) the University of Delaware; and (4) Delaware Solid Waste Authority."

Section 2. This Act shall be effective for services and commodities distributed after December 31, 1996.

Approved July 12, 1996

## CHAPTER 508

## FORMERLY

HOUSE BILL NO. 355  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 4

AN ACT TO AMEND SUBCHAPTER III OF CHAPTER 43 OF TITLE 21 OF THE DELAWARE CODE RELATING TO SCHOOL BUSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter III of Chapter 43 of Title 21 of the Delaware Code by adding thereto a new section to read as follows:

"§ 4366. Communication devices.

Every school bus being used for the transportation of children shall be equipped with a radio or telephonic communication device that will allow the driver of the bus to call for assistance in the event of an emergency. All costs associated with the purchase of communication devices and if applicable, the associated line charges, will be the responsibility of the State. All costs for use of communication devices for non 911 communications shall be the responsibility of the school district. Notwithstanding the above, any school district shall be free to absorb any such costs to its own account."

Section 2. This legislation shall become effective upon the appropriation of adequate funds by the General Assembly.

Approved July 12, 1996

## CHAPTER 509

## FORMERLY

## SENATE BILL NO. 458

## AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO STATE BUDGET, ACCOUNTING AND PAYROLL POLICIES AND PROCEDURES

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2706(a), Title 29, Delaware Code by deleting the phrase "a check signing machine" as it appears in said subsection.

Section 2. Amend §5942(a), Title 29, Delaware Code by adding the phrase "or electronic approval" between the words "certification" and "of" as they appear in said subsection.

Section 3. Amend §5942(b), Title 29, Delaware Code by deleting the first sentence in its entirety as it appears in said subsection and inserting the following:

"The Director shall conduct such post audits of State payrolls and such other investigations as deemed necessary to ensure that this chapter and the rules, regulations, and orders thereunder are being observed."

Section 4. Amend §5943(c), Title 29, Delaware Code by deleting the last sentence in its entirety as it appears in said subsection and inserting the following:

"Disciplinary action shall not be taken against any employee in the classified service who merely approved such document authorizing overpayment unless the person so approving participated in the preparation of such document."

Section 5. Amend §5943(e)(4)(b.), Title 29, Delaware Code by deleting the phrase "and step" as it appears in said subparagraph.

Section 6. Amend §5943(f), Title 29, Delaware Code by deleting said subsection in its entirety and inserting the following in lieu thereof:

"(f) For the purpose of subsections (d) and (e) of this section, the Director of Personnel or his designee shall determine whether an employee is properly appointed. The Director or his designee shall certify the appointment by approving the state personnel transaction supplied by the agency. The approval of the Director or his designee shall relieve any officer or appointing authority from liability because of an improper appointment, except where the improper appointment was effected through the fraud of any officer or appointing authority. The approval of the Director or his designee shall similarly relieve any officer or appointing authority from liability for the payment of wages, benefits or both arising under subsections (d) or (e) of this section, except where the officer or appointing authority is grossly negligent in disregarding any provision of this chapter, the merit rules or the Director's regulations adopted thereunder. Such approval by the Director or his designee shall not prevent the appointing authority from taking disciplinary action against any employee in the classified service who negligently prepared the document authorizing the overpayment of wages, benefits or both."

Section 7. Amend §6103, Title 29, Delaware Code by deleting the words "signed by the responsible head of each agency" as it appears in the last sentence of said section and inserting the words "with the appropriate approvals as prescribed in the accounting manual".

Section 8. Amend §6512, Title 29, Delaware Code by deleting subsections (a) through (f) in their entirety and inserting the following in lieu thereof:

"(a) It shall be unlawful for any agency to create any indebtedness or incur any obligation for personal services, work or labor, or for property, materials or supplies, except by written, printed or electronic requisition or order according to the form or format prescribed by the accounting manual unless specifically exempted therein and bearing the approval or approvals as prescribed by the accounting manual.

(b) The Secretary of Finance shall prepare the form of such orders or requisitions and shall provide a space or means to affix the approval(s) necessary.

(c) It shall be a breach of duty for any officer to approve any order or requisition in blank and a violation of this provision shall be a cause for removal from office.

(d) Whenever any agency shall make any order or requisition, such transaction shall be transmitted to the Division of Accounting as prescribed by the accounting manual.

(e) This section shall not apply to the Governor of this State nor to any judiciary department thereof."

Section 9. Amend §6515, Title 29, Delaware Code by deleting subsections (a) through (d) in their entirety and inserting a new (a) through (d) as follows:

"(a) No money shall be drawn from the Treasury of this State to pay the salaries and expenses of employees of this State, or to defray the expenses of any agency, or for or on account of any contract for building or repairs, or for property purchased, or for work and labor performed or for materials or supplies furnished to any agency, except upon legitimate itemized bills, invoices or statements presented to, reviewed and approved by an approving official of the agency being charged.

(b) Such obligations shall be paid only upon processing of the appropriate payment transactions as prescribed by the accounting manual, unless specifically exempted therein, and bearing the approval or approvals as prescribed by the accounting manual.

(c) If the payment transaction involves no violation of any provision of this chapter or of any state statute, the Division of Accounting shall cause the transaction to be approved and released for disbursement processing.

(d) For the payment of salaries, pensions or any other obligations for which bills, invoices or statements are not renderable, the Secretary of Finance shall process a payment transaction which shall be approved by him/her directing and authorizing the payment of the amounts due and payable."

Section 10. Amend §6516, Title 29, Delaware Code by deleting subsections (a) and (b) in their entirety and inserting a new (a) and (b) as follows:

"(a) The approval of any bill, invoice or statement by the Secretary of Finance, or the presentation of any payment transaction approved by him/her, shall be considered full authority for the payment of the same by the State Treasurer.

(b) All checks shall be drawn in consecutive numerical order. The Secretary of Finance shall keep records of expenditures of all state agencies so that the amount and nature of all such expenditures may be readily ascertained."

Section 11. Amend §6525, Title 29, Delaware Code by deleting said section in its entirety.

Section 12. Amend §6526, Title 29, Delaware Code by deleting said section in its entirety.

Section 13. Amend §6528(a), Title 29, Delaware Code by deleting the word "written" as it appears in said subsection.

Section 14. Amend §6528(b), Title 29, Delaware Code by deleting the word "written" as it appears in the subsection.

Section 15. Amend §6528(f), Title 29, Delaware Code by deleting paragraphs (1) and (2) in their entirety and inserting a new (1) and (2) as follows:

"(1) Specific nonroutine requirements, which shall be documented and controlled through separate accounts within the Budget Office contingencies.

(2) Personnel costs to meet overall state personnel cost requirements. Such transfers shall be fully documented."

Section 16. Amend §6528(i), Title 29, Delaware Code by deleting the first sentence of said subsection in its entirety and inserting a new sentence as follows:

"Agencies completing organization restructuring approved in § 1 of the Budget Appropriation Bill or any other legislation authorizing such organizational changes are hereby authorized to transfer funds between organizational units."

Section 17. Amend §8304(2), Title 29, Delaware Code by deleting the words "Budget Director" as they appear in said subsection and inserting the words "state's financial management and prescribed in the accounting manual;"

Section 18. Amend §8304(3), Title 29, Delaware Code by deleting said subsection in its entirety and inserting a new (3) as follows:

"(3) Prepare the form or format to be used in making out accounts or statements of indebtedness. Such forms or formats shall contain a notice that no account or statement of indebtedness thereon shall be valid unless an order or requisition authorizing such account or statement of indebtedness has been prepared in accordance with policies prescribed in the accounting manual."

Section 19. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Section 20. This Act shall become effective upon its enactment into law.

Approved July 12, 1996

## CHAPTER 510

## FORMERLY

## SENATE BILL NO. 433

## AS AMENDED BY SENATE AMENDMENT NO. 2

AN ACT TO AMEND CHAPTER 23, TITLE 18 OF THE DELAWARE CODE RELATING TO UNFAIR INSURANCE PRACTICES OF DISCRIMINATION BY INSURANCE COMPANIES BASED ON AN INDIVIDUAL'S STATUS AS A VICTIM OF DOMESTIC VIOLENCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2304(24), Chapter 23, Title 18 of the Delaware Code by adding after the words "Discriminatory practices against victims of abuse" the following words: "regarding life and health insurance".

Section 2. Amend §2304, Chapter 23, Title 18 of the Delaware Code by adding a new subsection (25) to read as follows:

*"(25) Discriminatory practices against victims of abuse regarding homeowners and private passenger motor vehicle insurance.*

A person or entity engaged in the business of homeowners and/or private passenger motor vehicle insurance in this State may not:

(a) Deny, refuse to issue, refuse to renew, refuse to reissue, cancel, or otherwise terminate a homeowners and/or private passenger motor vehicle insurance policy or restrict coverage on any individual solely because that individual or a member of that individual's family or household is, has been, or may be the subject of abuse, or seeks, has sought, or should have sought, medical or psychological treatment for abuse, protection from abuse, or shelter from abuse. Nothing in this section shall be construed to prohibit a person from denying, refusing to issue, renew or reissue, cancelling or otherwise terminating an insurance policy based on any existing insurance statute provided that the insurer routinely underwrites individuals in the same manner without regard to the individual's abuse status, abuse history, or abuse-related claim history and that any such action does not have the purpose or effect of treating abuse status as an underwriting criterion, is not based on any actual or perceived correlation between a type of claim or other underwriting information and abuse, and is otherwise permissible by law.

(b) Add any surcharge or rating factor to a premium of a homeowner's insurance policy solely because of a history of, status as, or potential to be a subject of abuse of the applicant or insured or of a member of the family or household of the insured. Nothing in this section shall be construed to prohibit a person from rating or surcharging a policy in accordance with any existing insurance statute provided that the insurer routinely rates or surcharges individuals in the same manner without regard to the individual's abuse status, abuse history, or abuse-related claims history, and any such action does not have the purpose or effect of treating abuse status as an underwriting criterion, is not based on any actual or perceived correlation between a type of claim or other underwriting information and abuse and is otherwise permissible by law.

(c) Deny coverage for property damage claims or medical payment coverage for an insured, if such coverage is available and purchased under the policy, as a result of abuse, even if such losses are caused by the intentional act, the fraudulent or criminal act, or the failure to act of a co-insured, and would otherwise have come under a policy's intentional act, criminal act, family, household, or similar exclusion, unless

(i) the claim or coverage is ordinarily denied in the same manner to an insured or claimant who is not a victim of abuse;

(ii) there is collusion or fraudulent acts by the party seeking the insurance coverage or benefits; or

(iii) the innocent co-insured refuses to cooperate with any law enforcement investigation, the results of which would be made available to the insurer to verify that the claim for loss resulted from a co-insured's wrongful act or omission.

The innocent co-insured shall, at a minimum, be entitled to recover a pro-rata share of the loss of real or personal property and the entire amount of additional living expenses, as the policy may so provide.

Nothing in this subsection shall be construed to prohibit a person from refusing to defend or indemnify the perpetrator of the wrongful act or omission against any claim for liability arising from such individual's wrongful act or omission. The insurer shall retain the right to subrogate against the wrongdoer for any losses incurred by the injured party, including a wrongdoer who was a co-insured with the victim.

(d) Ask an insured or an applicant for homeowners and/or private passenger motor vehicle insurance whether that individual is, has been, or may be the subject of abuse, or seeks, has sought, or should have sought medical or psychological treatment specifically for abuse, protection from abuse, or shelter from abuse.

(e) A person shall not be held civilly or criminally liable for any cause of action which may be brought because of compliance with this section. Nothing herein shall preclude any action or investigation against an insurer to enforce this act. Nothing in this section shall preclude a person's obligations to report suspected fraudulent activities to the Insurance Department Fraud Bureau pursuant to Chapter 24 of this Title."

Approved July 17, 1996

## CHAPTER 511

## FORMERLY

HOUSE BILL NO. 642  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 2AN ACT TO AMEND TITLE 21, SECTION 305 OF THE DELAWARE CODE RELATING  
TO REGISTRATION, LICENSE AND DRIVER'S PERFORMANCE RECORDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Title 21, Section 305 of the Delaware Code by deleting the existing section in its entirety and substituting in lieu thereof:

"Privacy Act Governing the Release of Motor Vehicle Driving History and License Records".

(A) In General -- Except as provided in subsection (B), (D), (E), and (I) the Division of Motor Vehicles, and any officer, employee, or contractor, thereof, any other person shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the Division in connection with a motor vehicle record. Only driver license and driver performance records which are three years old or less shall be made available to authorized persons or agencies; except, persons requesting their own records, law enforcement officers, the courts and other motor vehicle jurisdictions may also have access to those records and to vehicle title and registration information which are over three years old and are being retained by the Division. Division motor vehicle records can be transmitted to other motor vehicle jurisdictions electronically over authorized networks.

(B) Permissible Uses -- Personal information referred to in subsection (A) shall only be disclosed for use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls or advisories; performance monitoring of motor vehicles, motor vehicle parts, and motor vehicle dealers by motor vehicle manufacturers; and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft of 1992, and the Clean Air Act. Personal information may be disclosed only upon proof of the identity of the person requesting the record(s) and sworn representation by such person that the released personal information will be strictly limited to one or more of the following described uses:

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency, in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and motor vehicle dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees or contractors, but only

(a) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors, and

(b) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against the individual.

(4) For use in connection with any civil, criminal, administrative, or arbitration proceeding in any Federal, State or local court or agency or before any self-regulating body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State or local court.

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating or underwriting.

(7) For use in providing notice to the owners or lien holders of towed or impounded vehicles.

(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1946 (49 U.S.C. App. 2710

et seq.).

(10) For use in connection with the operation of private toll transportation facilities.

(11) Persons requesting their own records, law enforcement officers, judicial and other motor vehicle jurisdictions through the supporting information networks may have access to all records retained by the Division.

(12) For bulk distribution for surveys, marketing or solicitations unless the person submitted a request to the Division requesting that his or her name and address contained in the motor vehicle records be excluded from any lists compiled and sold, electronically transmitted or otherwise supplied by the Division for direct mail advertising purposes. This exclusion shall be honored by the Division and shall remain in effect until the Division receives notice from the person to cancel the request or until the record is purged from the Division's files. Personal information obtained under this section shall not be re-disclosed for marketing purposes if the person has requested, in a timely fashion, their motor vehicle records be excluded on lists used for marketing purposes.

(13) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

(C) Requests for Additional Protection of Personal Information -- A person may submit a notarized affidavit to be supplied by the Division requesting that his or her address, phone number, and social security number contained in the driver or vehicle records of the Division be kept confidential except from those named in subsection (B)(1), (2), (6), of this section. The affidavit must swear or affirm that the request is being made because of the person's fear of harm from another individual to themselves, a family or household member, or their property. A properly submitted notarized affidavit satisfying these conditions shall be honored by the Division and shall remain in effect until the record is purged from the Division's files or until the requesting person submits written notice requesting the release of his or her personal information. This section does not prohibit the Division from the normal practice of returning a

vehicle title with personal information displayed to a lienholder or lessor. In addition, the Division may return a vehicle title and registration card to a dealership who has submitted the title application for their customer.

(D) Court Approval for Release of Information -- Persons or agencies other than those named in subsection (B) and (C) of this section shall be prohibited from acquiring any information pertaining to an individual's address, telephone number, vehicle title, vehicle registration, driver license, and driver performance that is in the possession of the Division of Motor Vehicles except in the following case:

Any individual who can show that there is a lawful need for the prohibited information and that the information cannot be reasonably acquired through any alternate means, may present such evidence to the administrative hearing officer of the Division of Motor Vehicles. Upon consideration of the evidence presented, the administrative hearing officer may then in his/her discretion provide an order for the release of part or all of the requested information from the Division of Motor Vehicles to the requesting individual.

In this instance, the Division shall send by U.S. mail notification to any individuals identified in Section (C) whose information has been requested that the administrative hearing officer has ordered the release of such information and that such information will be furnished to the requesting party. Upon denial of the request, the individual may file a de novo appeal to the Justice of the Peace Courts. Upon receipt of the application fee of \$10.00 from the individual, the Justice of the Peace Court, in its discretion, may order the release of part or all of the requested information by the DMV to the requesting individual. The Division shall notify the individuals by U.S. Mail if the Justice of the Peace Court orders release of part or all of the requested information.

(E) Disclosure with Consent -- Personal information may be disclosed to any person requesting such information, if such person demonstrates, in such form and manner as the department prescribes, that he has obtained a notarized, written consent from the person whose information is protected. Such consent must be provided each time personal information is released. Each written consent form shall be retained by the Division in electronically digitized microfilm or paper format for a minimum period of five years.

(F) Fees for copies and information -- The Secretary shall charge a fee of \$4 for each copy of each State and/or National Driving Record supplied to persons other than those governmental agencies designated in subsection (B)(1) of this section. If special handling is needed to certify a record or notarize an affidavit, the fee for such handling shall be \$8 to include the requested record. Partial header records sold for direct mail advertising purposes will be charged \$375 for set up and \$11.75 per 1000 records or portion thereof.

(G) Signature on all records released -- Any record or certified record supplied by the Department pursuant to this title shall contain the signature or facsimile signature of the Director of the Division of Motor Vehicles or of another official of the Division who is a custodian of such records and is designated by the Director to sign or to have a facsimile signature affixed. For purposes of this subsection a 'facsimile signature' can be a preprinted signature, a rubber-stamped signature or any other recognized facsimile.

(H) Contract to protect confidentiality -- Governmental agencies, businesses and individuals designated by subsection (B) of this section to obtain vehicle registration, title, driver license, or driver performance records and obtain such personal information by electronic means will sign contracts acknowledging their responsibility to protect personal information as follows:

(1) The personal information obtained from the Division's records will not be resold or re-disclosed in part or whole except for those authorized purposes covered in subsection (B).

(2) Governmental agencies and businesses are prohibited from releasing personal information used, rented or sold solely for bulk distribution for surveys, marketing, or solicitations on those individuals who prohibited the release of their personal information according to subsection (F).

(l) Additional Conditions -- In addition to provision for payment of applicable fees, the department may, prior to the disclosure of personal information as permitted above, require the meeting of certain conditions by the requesting person for the purpose of obtaining reasonable assurance concerning the identity of the person requesting the release of information, and, to the extent required, that the use will be only as authorized, or the consent of the person who is the subject of the information has been properly obtained. Such conditions may include, but need not be limited to, the making and filing of a written application in such form and containing such information and certification requirements as the department may prescribe.

Governmental agencies, businesses and individuals who request motor vehicle records by electronic means or who access Division records on a continual basis and are authorized access to the records per subsection B to F, inclusively, shall sign contracts acknowledging their responsibility to protect personal information under this subsection. The contract will contain this section of Title 21 and the requester will specify, as a minimum: (1) the legal basis authorizing access to personal data contained in the Division's records, (2) purposes and intended uses for this data, (3) designation of data elements needed to satisfy their purposes, (4) agreement not to disclose the information obtained unless permitted by this subsection, (5) other requirements as deemed necessary by the Division. Law enforcement, the courts, other motor vehicle jurisdictions and those governmental agencies and businesses designated by the Secretary of Public Safety are exempt from this subsection.

Medical information, electronically digitized photographs and signatures are not releasable unless approved by the person to whom the information pertains, used to administer the motor vehicle program, used by the courts or law enforcement agencies or authorized by the Secretary of Public Safety. A signed release from the licensee whose medical information is sought shall constitute a permitted use if notarized.

Personal information shall not be available by telephone or other methods of request other than by personal appearance and in writing unless approved by the Director of Motor Vehicles or his/her designee.

The Division, in its discretion, may deny access to any or all records if it finds the requesting agency's or person's purpose in requesting such information is improper or that the request was made in bad faith.

The Division will record, but can deny the release of residential addresses to any agency, business or person outside of the Division when requested by the court or when law enforcement documentation proves the person is in immediate danger if this information is released. The record will contain a releasable mailing address to enable the Division and law enforcement to have direct contact with that individual.

The Director may destroy any records of the Division which have been maintained on file for three years, unless otherwise required by this title, which he/she may deem obsolete and of no further use in carrying out the powers and duties of the Division, provided that the Director of the Division of Historical and Cultural Affairs has authorized such destruction.

Any record or certified record supplied by the Department pursuant to this title shall be signed by the signature or facsimile signature of the Director or of another official of the Division who is a custodian of such records and is designated by the Director to sign such records or have his/her signature affixed. For purposes of this subsection, a "facsimile signature" can be a printed signature, a rubber stamped signature or any other recognized facsimile.

(l) Wrongful Disclosure -- If the Division discovers at any time that any information protected under Section (c) has been wrongfully disclosed, it shall notify the holder of that information that the information was wrongfully disclosed and may not be used, resold or re-disclosed in any way. The Division shall also inform the person who the information pertains to that his or her personal information was disclosed.

(k) Resale or Redisclosure --

(1) An authorized recipient of personal information, except a recipient under subsection (12) of paragraph (B), may resell or redisclose the information for any use permitted under paragraph B (but not including the use for bulk distribution for surveys, marketing or solicitations as set forth in subsection (12) of paragraph B).

(2) An authorized recipient of personal information for bulk distribution for surveys, marketing or solicitations, under subsection (12) of paragraph B, may resell or redisclose personal information only in accordance with the terms of said subsection concerning the right of individuals, who have so requested in a timely manner, not to have such surveys, marketing or solicitations directed at them.

(3) Any authorized recipient who resells or rediscloses personal information shall be required by the Department to maintain for a period of not less than five years records as to the information obtained and the permitted use for which the information was obtained and to make such records available for inspection by the department, upon request.

(I.) Regulations and Waiver Procedure -- The department is authorized to adopt administrative regulations to carry out the purposes of this Act. The regulations may include procedures under which the department, upon receiving a request for personal information that is not subject to disclosure, may mail a copy of such request to each individual who is the subject of the information, informing such individual of the request, together with a statement to the effect that disclosure is prohibited and will not be made unless the individual affirmatively elects to waive such individual's right to privacy under this Act.

(M) Unlawful Acts --

(1) Procurement for Unlawful Purposes -- It shall be unlawful for any person knowingly to obtain or disclose personal information from a motor vehicle record for any use not permitted under this title.

(2) False Representation -- It shall be unlawful for any person to make false representation to obtain any personal information from an individual's motor vehicle record.

(N) Penalties -- Any person requesting the disclosure of personal information from department records who misrepresents his identity or knowingly makes a false statement to the Department in order to obtain restricted information or who knowingly violates any other provision of this chapter shall be guilty of a Class A misdemeanor.

(O) Civil Actions --

(1) Cause of Action -- A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains.

(2) Remedies -- The court may award:

(a) actual damages, but not less than liquidated damages in the amount of \$2,500;

(b) punitive damages upon proof of willful or reckless disregard of the law;

(c) reasonable attorney's fees and other litigation costs reasonably incurred; and

(d) such other preliminary and equitable relief as the court determines to be appropriate.

(P) Definitions --

In this chapter:

(1) 'Motor Vehicle Record' means any record that pertains to a motor vehicle operator's or driver's permit or license, motor vehicle title, motor vehicle registration, or identification document issued by a Department of Motor Vehicles or other state or local agency authorized to issue any such forms or credentials:

(2) 'Person' means an individual, organization or entity, but does not include a State or agency thereof; and

(3) 'Personal Information' means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address, telephone number, and medical or disability information, but does not include information on vehicular accidents, driving or equipment-related violations, and driver's license or registration status.

(Q) Severability: If a court of competent jurisdiction determines that any provision of this Act is unconstitutional or invalid, the remaining provision of this Act shall have the full force and effect of law.

(R) Effective Date: In accordance with the Driver's Privacy Protection Act this law shall be effective no later than August 24, 1997.

Approved July 17, 1996

## CHAPTER 512

## FORMERLY

HOUSE BILL NO. 643  
 AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 2 AND  
 SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO VOTER  
 REGISTRATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
 DELAWARE (Two-thirds of all members elected to each House thereof concurring  
 therein):

Section 1. Amend Chapter 13, Title 15 of the Delaware Code, by renumbering the  
 existing Sections 1303 through 1305 as Sections 1304 through 1306 respectively and by  
 inserting a new section 1303 to read:

“§ 1303 Confidentiality of addresses.

(a) A person may petition the Superior Court for an order to have his or her  
 address, which is required to be placed on voter application, registration, or transfer  
 records, kept confidential upon a showing of a legitimate need and lawful purpose. Upon  
 submission to the Commissioner of Elections and Department of Elections for the County  
 in which the voter seeks to register of a certified copy of the court order granting  
 confidentiality, the person's address shall be removed from all voter records available for  
 public inspection, as long as the submission is not twenty-one (21) days prior to an  
 election, in which case the person's address shall be removed from the voter records  
 within seven (7) days after the election.

(b) Following submission of the court order, the person's address may not be  
 made available for public inspection or copying, except under the following  
 circumstances:

(1) If requested, to a law enforcement agency; or

(2) If directed by a court order, to a person identified in the order. Within  
 3 days of the date of any disclosure of a confidential address under Subsection (b)(2) of  
 this section, the Commissioner of Elections shall give to the person whose address was  
 disclosed written notification of the disclosure, the name of the person to whom the  
 information was disclosed, and the reason for the disclosure. The Commissioner may  
 attach a copy of the court order to satisfy these requirements. A person to whom  
 disclosure is made under Subsection (b)(2) of this section shall sign a statement agreeing  
 to keep such information confidential.

(d) Any address rendered confidential pursuant to this section shall remain  
 confidential for as long as the Court shall order.

(c) Unlawful acts and penalties

(1) Procurement for unlawful purposes. It shall be unlawful for any  
 person knowingly to obtain or disclose any address from voter records that is  
 rendered confidential for any use not permitted under this section.

(2) False representation. It shall be unlawful for any person to make false  
 representation to obtain from voter records a person's address that has been  
 rendered confidential under this section.

(3) Penalties.

Any person requesting the disclosure of personal information from voter registration records who misrepresents his identify or knowingly makes a false statement *in order to obtain restricted information or who knowingly violates any other provision of this chapter shall be guilty of a class A misdemeanor.*"

Section 2. Severability. If a court of competent jurisdiction determines that any provision of this Act is unconstitutional or invalid, the remaining provisions of this Act shall have the full force and effect of law.

Section 3. Effective Date. This Act shall become effective thirty days after its enactment into law

Approved July 17, 1996

## CHAPTER 513

## FORMERLY

HOUSE BILL NO. 522  
 AS AMENDED BY HOUSE AMENDMENT NOS. 1, 2 AND 3 AND  
 SENATE AMENDMENT NOS. 2, 4 AND 5

AN ACT TO AMEND TITLE 10 AND TITLE 25 OF THE DELAWARE CODE RELATING TO LANDLORD-TENANT RELATIONSHIPS; AND PROVIDING FOR A RESIDENTIAL LANDLORD-TENANT CODE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part III, Title 25 of the Delaware Code, by striking the Title of said Part III; by striking Chapter 51 of said Part III in its entirety, and substituting in lieu thereof the following:

## PART III. RESIDENTIAL LANDLORD-TENANT CODE

## CHAPTER 51. GENERAL PROVISIONS

SUBCHAPTER 1. RIGHTS, OBLIGATIONS AND  
 PROCEDURES, GENERALLY

## §5101. Applicability of Code.

(a) This Code shall regulate and determine all legal rights, remedies, and obligations of all parties and beneficiaries of any rental agreement of a rental unit within this State, wherever executed. Any rental agreement, whether written or oral, shall be unenforceable insofar as the agreement or any provision thereof conflicts with any provision of this Code, and is not expressly authorized herein. The unenforceability shall not affect other provisions of the agreement which can be given effect without the void provision.

(b) Any rental agreement for a commercial rental unit is excluded from this Code. All legal rights, remedies and obligations under any agreement for the rental of any commercial rental unit shall be governed by general contract principles; and only Chapter 57, Title 25 of the Delaware Code and Part IV, Title 25 of the Delaware Code shall have any application to commercial rental agreements.

## §5102. Exclusions from Application of this Code.

The following arrangements are not intended to be governed by this Code, unless created solely to avoid such application:

(1) Residence at an institution, whether public or private, where such residence is merely incidental to detention or to the provision of medical, geriatric, educational, counseling, religious or similar services, including (but not limited to) prisons, student housing provided by a college or school, old-age homes, nursing homes, homes for unwed mothers, monasteries, nunneries and hospitals.

(2) Residence by a member of a fraternal organization in a structure operated for the benefit of the organization.

(3) Residence in a hotel, motel, cubicle hotel or other similar lodgings.

(4) Non-renewable rental agreements of 120 days or less for any calendar year for a dwelling located within the boundaries of Broadkill Hundred, Lewes-Rehoboth Hundred, Indian River Hundred, and Baltimore Hundred.

(5) A rental agreement for ground upon which improvements were constructed or installed by the tenant and used as a dwelling, where the tenant retains ownership or title thereto, or obtains title to existing improvement on the property.

§5103. Jurisdiction.

Any person, whether or not a citizen or resident of this State, who owns, holds an ownership or beneficial interest in, uses, manages or possesses real estate situated in this State submits himself, herself or itself or such person's personal representative to the jurisdiction of the Courts of this State as to any action or proceeding for the enforcement of an obligation arising under this Code.

§5104. Obligations of Good Faith.

Every duty under this Code, and every act which must be performed as a condition precedent to the exercise of a right or remedy under this Code, imposes an obligation of good faith in its performance or enforcement.

§5105. Disclosure.

(a) On each written rental agreement, the landlord shall prominently disclose:

(1) the names and usual business addresses of all persons who are owners of the rental unit or the property of which the rental unit is a part, or the names and business addresses of their appointed resident agents, and/or

(2) the names and usual business addresses of any person who would be deemed a landlord of the unit pursuant to §5141(k).

(b) Where there is a written rental agreement, the landlord shall provide a copy of such written rental agreement to the tenant, free of charge. In the case of an oral agreement, the landlord shall, on demand, furnish the tenant with a written statement containing the information required by subsection (a).

(c) Any owner or resident agent not dealing with the tenant as a landlord shall be responsible for compliance with this section by the landlord, and may not take advantage of any failure to serve process upon such owner or resident agent in any proceeding arising under this Code where such failure is due to the owner or resident agent's failure to comply with this section.

§5106 Rental Agreement; Term and Termination of Rental Agreement.

(a) No rental agreement, unless in writing, shall be effective for a longer term than one (1) year.

(b) Where no term is expressly provided, a rental agreement for premises shall be deemed and construed to be for a month-to-month term.

(c) The landlord may terminate any rental agreement, other than month-to-month agreements, by giving a minimum of sixty days' written notice to the tenant prior to the expiration of the term of the rental agreement. The notice shall indicate that the agreement shall terminate upon its expiration date. A tenant may terminate a rental agreement by giving a minimum of sixty days' written notice prior to the expiration of the term of the rental agreement, that the agreement shall terminate upon its expiration date.

(d) Where the term of the rental agreement is month-to-month, the landlord or tenant may terminate the rental agreement by giving the other party a minimum of sixty days' written notice, which sixty-day period shall begin on the first day of the month following the day of actual notice.

(e) With regard to a tenant occupying a federally-subsidized housing unit, in the event of any conflict between the terms of this Code and the terms of any federal law, regulations, or guidelines, the terms of the federal law, regulations, or guidelines shall control.

§5107. Renewals of Rental Agreements with Modifications.

(a) If the landlord intends to renew the rental agreement subject to amended or modified provisions, the landlord shall give the tenant a minimum of sixty days' written notice prior to the expiration of the rental agreement that the agreement shall be renewed subject to amended or modified provisions, including but not limited to amended provisions relating to the length of term or the amount of security deposit or rent. Such notice shall specify the modified or amended provisions, the amount of any rent or security deposit, and the date on which any modifications or amendments shall take effect.

(b) After receipt of such notice from the landlord, unless the tenant notifies the landlord of the tenant's intention to terminate the existing rental agreement a minimum of forty-five days prior to the last day of the term, the provisions of the amended or modified rental agreement shall be deemed to have been accepted and agreed to by the tenant, and the terms of the lease, as amended, shall take full force and effect.

(c) If the tenant rejects the modified terms or provisions set forth in a notice of renewal given under this section, then the rejected notice of renewal shall be considered an effective termination notice.

(d) The terms of subsections (a) through (c) herein shall not be applicable where the tenant's rent and security deposit are a function of the tenant's income in accordance with any form of regulations or guidelines of the United States Department of Housing and Urban Development ("HUD"); in the event that they are a function of income, the regulations and guidelines established by HUD with regard to the determination and future adjustments of a tenant's rent and security deposit shall govern. With regard to a tenant's occupying HUD-subsidized units, in the event of any conflict between the terms of this Code and the terms of any HUD regulation or guideline, the terms of a HUD regulation or guideline shall control.

§5108. Rental Agreement; Automatic Extension of Agreements where parties fail to terminate or renew subject to Modifications.

(a) Where a rental agreement, other than for farm unit, is for one or more years, and sixty days or upward before the end of the term either the landlord does not give notice in writing to the tenant of landlord's intention to terminate the rental agreement, and the tenant does not give forty-five days notice to the landlord of tenant's intention to terminate the rental agreement, the term shall be month-to-month, and all other terms of the rental agreement shall continue in full force and effect.

(b) The provisions of subsections (a) through (c) of §5107 of this Code shall control if a notice of renewal with modifications has been sent.

(c) With regard to a tenant occupying a federally-subsidized housing unit, in the event of any conflict between the terms of this Code and the terms of any federal law, regulations, or guidelines, the terms of the federal law, regulations, or guidelines shall control.

§5109. Rental Agreement; Promises Mutual and Dependent.

(a) Material promises, agreements, covenants or undertakings of any kind to be performed by either party to a rental agreement shall be interpreted as mutual and dependent conditions to the performance of material promises, agreements, covenants and undertakings by the other party.

(b) A party undertaking to remedy a breach by the other party in accordance with this Code shall be deemed to have complied with the terms of this Code if their noncompliance with the exact instructions of this Code is nonmaterial and nonprejudicial to the other party.

§5110. Rental Agreement; Effect of Unsigned Rental Agreement.

(a) If the landlord does not sign a written rental agreement which has been signed and tendered to the landlord by the tenant, acceptance of rent without reservation by the landlord shall give to the rental agreement the same effect as if it had been signed by the landlord.

(b) If the tenant does not sign a written rental agreement which has been signed and tendered to the tenant by the landlord, acceptance of possession and payment of rent by the tenant, without reservation, shall give to the rental agreement the same effect as if it had been signed by the tenant.

(c) Where a rental agreement which has been given effect by the operation of this section provides by its terms for a term longer than one (1) year, it shall operate to create only a one (1) year term.

#### §5111. Attorney's Fees Prohibited.

No provision in a rental agreement providing for the recovery of attorney's fees by either party in any suit, action or proceeding arising from the tenancy shall be enforceable.

#### §5112. Time Computation.

In computing any period of time prescribed or allowed by order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included unless specifically included by statute, order or rule. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.

#### §5113. Service of Notices or; Pleadings and Process.

(a) Any notice or service of process required by this Code shall be served either personally upon the tenant or landlord or upon the tenant by leaving a copy thereof at the person's rental unit or usual place of abode with an adult person residing therein; and upon the landlord by leaving a copy thereof at the landlord's address as set forth in the lease or as otherwise provided by landlord with an adult person residing therein, or with an agent or other person in the employ of the landlord whose responsibility it is to accept such notice. If the landlord is an artificial entity, pursuant to Supreme Court Rule 57, service of the notice or process may be made by leaving a copy thereof, at its office or place of business as set forth in the lease with an agent authorized by appointment or by law to receive service of process.

(b) In lieu of personal service or service by copy of the notice or process required by this Code, a copy of such notice or process may be sent by registered or certified mail, or first-class mail as evidenced by a certificate of mailing postage-prepaid, addressed to the tenant at the leased premises, or to the landlord at the landlord's business address as set forth in the lease or as otherwise provided by landlord, or if the landlord is an artificial entity, pursuant to Supreme Court Rule 57, at its office or place of business. The return receipt, of the notice whether signed, refused or unclaimed, sent by registered or certified mail, or the certificate of mailing if sent by first-class mail, shall be held and considered to be prima facie evidence of the service of the notice or process.

(c) In the alternative, service of notice or process may also be obtained by one of the following two alternatives:

(1) Posting of the notice on the rental unit, when combined with a return receipt or certificate of mailing; or

(2) Personal service by a special process-server appointed by the Court.

#### §5114. Notice; Contractual Notice Between the Parties.

(a) A person has notice of a fact if:

- (1) The person has actual knowledge of it;
- (2) The person has received a notice pursuant to the provisions of this Code; or
- (3) From all the facts and circumstances known at the time in question, such person has reason to know that it exists.

§5115. Application for a Forthwith Summons.

Where the landlord alleges and by substantial evidence demonstrates to the Court that a tenant has caused substantial or irreparable harm to landlord's person or property, or where the tenant alleges, and by substantial evidence demonstrates to the Court that the landlord has caused substantial or irreparable harm to the tenant's person or property, the Justice of the Peace Court shall issue a forthwith summons to expedite the Court's consideration of the allegations.

§5116. Fair Housing Provisions.

(a) No person, being an owner or agent of any real estate, house, apartment or other premises, shall refuse or decline to rent, subrent, sublease, assign or cancel any existing rental agreement to or of any tenant or any person by reason of race, creed, religion, marital status, color, sex, national origin, disability, age or occupation or because the tenant or person has a child or children in the family.

(b) No person shall demand or receive a greater sum as rent for the use and occupancy of any premises because the person renting or desiring to rent the premises is of a particular race, creed, religion, marital status, color, sex, national origin, disability, age or occupation or has a child or children in the family.

(c) In the event of discrimination under this section, the tenant may recover damages sustained as a result of the landlord's action, including but not limited to, reasonable expenditures necessary to obtain adequate substitute housing.

(d) Notwithstanding subsection (a) of this section relating to age discrimination, and consistent with federal and state fair housing acts, a landlord may make rental units available exclusively for rental by senior citizens. A senior citizen rental unit shall be available for rent solely to senior citizens, without regard to race, creed, religion, marital status, color, sex, national origin, disability, or occupation of the senior citizen and without regard to whether or not the senior citizen has a dependent child or children in the residence.

§5117. Remedies for Violation of the Rental Agreement or the Code.

(a) For any violation of the rental agreement, or this Code, or both, by either party, the injured party shall have a right to maintain a cause of action in any Court of competent civil jurisdiction.

(b) In satisfaction of any judgment obtained by the landlord for rental arrearage or unlawful destruction of property, the wages of the judgment debtor may be attached in the manner provided by law.

§5118. Summary of Residential Landlord-Tenant Code.

A summary of the Landlord-Tenant Code, as prepared by the Consumer Protection Unit of the Attorney General's Office or its successor agency, shall be given to the new tenant, at the beginning of the rental term. If the landlord fails to provide the summary, the tenant may plead ignorance of the law as a defense.

## SUBCHAPTER II. DEFINITIONS

§5141. Definitions.

The following words, terms and phrases, when used in Part III of Title 25, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) "Action" shall mean any claim advanced in a Court proceeding in which rights are determined.

(b) "Building and Housing Codes" shall include any law, ordinance or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

(c) "Certificate of Mailing" shall mean United States Postal Form No. 3817, or its successor.

(d) "Commercial Rental Unit" shall mean any lot, structure or portion thereof, which is occupied or rented solely or primarily for commercial or industrial purposes.

(e) "Disabled or Handicapped" person shall have the same meaning as found in the Americans with Disabilities Act (1992) as amended.

(f) "Equivalent Substitute Housing" shall mean a rental unit of like or similar location, size, facilities and rent.

(g) "Extended Absence" shall mean any absence of more than seven (7) days.

(h) "Forthwith Summons" shall mean any summons requiring the personal appearance of a party or person(s) at the earliest convenience of the Court.

(i) "Good Faith Dispute" shall mean the manifestation of an honest difference of opinion relating to the rights of the parties to a rental agreement pursuant to such agreement, or pursuant to this Code.

(j) "Holdover" or "Holdover Tenant" shall mean a tenant who wrongfully retains possession, or who wrongfully exercises control of the rental unit after the expiration or termination of the rental agreement.

(k) "Injunction" shall mean a Court order prohibiting a party from doing an act, or restraining a party from continuing an act.

(l) "Landlord" shall mean:

(1) the owner, lessor, or sub-lessor of the rental unit or the property of which it is a part and, in addition, shall mean any person authorized to exercise any aspect of the management of the premises, including any person who, directly or indirectly, receives rents or any part thereof other than as a bona fide purchaser, and who has no obligation to deliver the whole of such receipts to another person; or

(2) any person held out by any landlord as the appropriate party to accept performance, whether such person is a landlord or not; or

(3) any person with whom the tenant normally deals as a landlord; or

(4) any person to whom the person specified in paragraphs (2) and (3) of this subsection is directly or ultimately responsible.

(m) "Legal Holiday" shall mean any date designated as a legal holiday under §501, Chapter 5, Title 1 of the Delaware Code.

(n) "Local Government Unit" shall mean a political subdivision of this state, including but not limited to a county, city, town, or other incorporated community or subdivision of the subdivision providing local government service for residents in a geographically limited area of the state as its primary purpose, and has the power to act primarily on behalf of the area.

- (o) "Month to month" shall mean a renewable term of one month.
- (p) "Normal Wear and Tear" shall mean the deterioration in the condition of a property or premises by the ordinary and reasonable use of such property or premises.
- (q) (1) "Owner" shall mean one or more persons, jointly or severally, in whom is vested:
- (i) All or part of the legal title to property; or
  - (ii) All or part of the beneficial ownership, usufruct, and a right to present use and enjoyment of the premises.
- (2) The word "owner" shall include a mortgagee in possession.
- (r) "Person" shall include an individual, artificial entity pursuant to Supreme Court Rule 57, government or governmental agency, business trust, two or more persons having a joint or common trust, or any other legal or commercial entity.
- (s) "Pet Deposit" shall mean any deposit made to a landlord by a tenant to be held for the term of the rental agreement, or any part thereof, for the presence of an animal in a rental unit.
- (t) "Premises" shall mean a rental unit and the structure of which it is a part, and the facilities and appurtenances therein, grounds, areas, and facilities held out for the use of tenants generally, or whose use is contracted for between the landlord and the tenant.
- (u) "Rental Agreement" shall mean and include all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations or any other provisions concerning the use and occupancy of a rental unit.
- (v) "Rental Unit," "Dwelling Unit," or "Dwelling Place" shall mean any house, building, structure, or portion thereof, which is occupied, rented or leased as the home or residence of one or more persons.
- (w) "Security Deposit" shall mean any deposit, exclusive of a pet deposit, given to the landlord which is to be held for the term of the rental agreement, or for any part thereof.
- (x) "Senior Citizen" shall mean any person, sixty-two years of age or older, regardless of the age of such person's spouse.
- (y) "Support Animal" shall mean any animal individually trained to do work or perform tasks to meet the requirements of a disabled person; including, but not limited to minimal protection work, rescue work, pulling a wheelchair, or retrieving dropped items.
- (z) "Tenant" shall mean a person entitled under a rental agreement to occupy a rental unit to the exclusion of others, and the word "tenant" shall include an occupant of any premises pursuant to a conditional sales agreement.
- (aa) "Utility Services" shall mean water, sewer, electricity or fuel.

Section 2 Amend Chapter 53, Part III, Title 25 of the Delaware Code, by striking said Chapter in its entirety, and substituting in lieu thereof the following:

#### CHAPTER 53. LANDLORD OBLIGATIONS AND TENANT REMEDIES

##### §5301. Landlord Obligation; Rental Agreement.

- (a) A rental agreement shall not provide that a tenant:
- (1) Agrees to waive or forego rights or remedies under this Code;
  - (2) Authorizes any person to confess judgment on a claim arising out of the rental agreement;

(3) Agrees to the exculpation or limitation of any liability of the landlord arising under law, or to indemnify the landlord for that liability or the costs connected therewith.

(b) A provision prohibited by subsection (a) of this section which is included in the rental agreement is unenforceable. If a landlord attempts to enforce provisions of a rental agreement known by the landlord to be prohibited, by subsection (a) herein the tenant may bring an action to recover an amount equal to three (3) months rent, together with costs of suit but excluding attorneys' fees.

§5302. Tenant Remedy; Termination at the Beginning of Term.

(a) If the landlord fails to substantially conform to the rental agreement, or if there is a material non-compliance with any Code, statute, ordinance or regulation governing the maintenance or operation of the premises, the tenant may, on written notice to the landlord, terminate the rental agreement and vacate the premises at any time during the first month of occupancy so long as the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord to correct all or any part of the condition or conditions which would justify termination by the tenant under this section.

(b) If the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord, to correct all or any part of the condition or conditions which would justify termination by the tenant under this section; and if substantially the same act or omission which constitutes a prior non-compliance, of which prior notice was given under subsection (a), recurs within six (6) months, the tenant may terminate the rental agreement upon at least fifteen (15) days written notice, with notice shall specify the breach, and the date of termination of the rental agreement

(c) If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition; and, if the landlord does not remedy the condition within fifteen (15) days, the tenant may terminate the rental agreement. The tenant must then initiate an action in Justice of the Peace Court seeking a determination that the landlord has breached the rental agreement by depriving the tenant of a substantial part of the benefit or enjoyment of the bargain, and may seek damages, including a rent deduction from the date written notice of the condition was given to the landlord.

(d) If the condition referred to in subsection (c) was caused willfully or negligently by the landlord, the tenant may recover the greater of:

(1) the difference between the rent payable under the rental agreement, and all expenses necessary to obtain equivalent substitute housing for the remainder of the rental term; or

(2) An amount equal to one (1) month's rent and the security deposit.

(e) The tenant may not terminate the rental agreement for a condition caused by the want of due care by the tenant a member of tenant's family, or any other person on the premises with the tenant's consent. If a tenant terminates wrongfully, the tenant shall remain obligated under the rental agreement.

§5303 Landlord Obligation to Supply Possession of Rental Unit.

The landlord shall supply the rental unit bargained for at the beginning of the term, and shall put the tenant into full possession.

§5304 Tenant's Remedies for Failure to Supply Possession

(a) If the landlord fails to put the tenant into full possession of the rental unit at the beginning of the agreed term, the rent shall abate during any period the tenant is unable to enter; and

(1) Upon notice to the landlord, the tenant may terminate the rental agreement at any time the tenant is unable to enter into possession; and the landlord shall return all monies paid to the landlord for the rental unit, including any pre-paid rent, pet deposit and security deposit; and

(2) If such inability to enter is caused wrongfully by the landlord or by anyone with the landlord's consent or license due to substantial failure to conform to existing building and housing Codes, the tenant may recover reasonable expenditures necessary to secure equivalent substitute housing for up to one month. In no event shall such expenditures under this subsection exceed the agreed upon rent for one month. Such expenditures may be recovered by appropriate action or proceeding, or by deduction from the rent upon the submission of receipts for same.

(b) If such inability to enter results from the wrongful occupancy of a holdover tenant, and the landlord has not brought an action for summary possession against such holdover tenant, the entering tenant may maintain an action for summary possession against the holdover tenant. The expenses of such proceeding, and substitute housing expenditures, may be claimed from the rent in the manner specified in §5304 (a)(2).

§5305. Landlord Obligations Relating to the Rental Unit.

(a) The landlord shall, at all times during the tenancy:

(1) Comply with all applicable provisions of any State or local statute, Code, regulation or ordinance governing the maintenance, construction, use or appearance of the rental unit and the property of which it is a part;

(2) Provide a rental unit which shall not endanger the health, welfare or safety of the tenants or occupants, and which is fit for the purpose for which it is expressly rented;

(3) Keep in a clean and sanitary condition all common areas of his the buildings, grounds, facilities and appurtenances thereto which are maintained by the landlord;

(4) Make all repairs and arrangements necessary to put and keep the rental unit and the appurtenances thereto in as good a condition as they were, or ought by law or agreement to have been, at the commencement of the tenancy; and

(5) Maintain all electrical, plumbing and other facilities supplied by him the landlord in good working order

(b) If the rental agreement so specifies, the landlord shall:

(1) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, rubbish and garbage, and arrange for the frequent removal of such waste; and

2) Supply, or cause to be supplied water, hot water, heat and electricity to the rental unit.

(c) The landlord and tenant may agree by a conspicuous writing, separate from the rental agreement, that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling, but only if:

(1) the particular work to be performed by the tenant is for the primary benefit of the rental unit; and

(2) the work is not necessary to bring a non-complying rental unit into compliance with a building or housing Code, ordinance or the like; and

(3) adequate consideration, apart from any provision of the rental agreement, or a reduction in the rent is exchanged for the tenant's promise. In no event may the landlord

treating any agreement under this subsection as a condition to any provision of rental agreements; and

(4) The agreement of the parties is entered into in good faith and is not for the purpose of evading an obligation of the landlord.

(d) Evidence of compliance with the applicable building and housing Codes shall be prima facie evidence that the landlord has complied with this chapter, or with any other chapter of Part III of this Title.

§5306. Tenant's Remedies Relating to the Rental Unit: Termination.

(a) If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition; and, if the landlord does not remedy the condition within fifteen days, following receipt of notice, the tenant may terminate the rental agreement. If such condition renders the premises uninhabitable or poses an imminent threat to the health, safety or welfare of the tenant or any member of the family, then the tenant may, after giving notice to the landlord, immediately terminate the rental agreement without proceeding in a Justice of the Peace Court.

(b) The tenant may not terminate the rental agreement for a condition caused by the want of due care by the tenant, a member of the family, or any other person on the premises with the tenant's consent. If a tenant terminates wrongfully, the tenant shall remain obligated under the rental agreement.

(c) If the condition referred to in subsection (a) was caused willfully or negligently by the landlord, the tenant may recover the greater of:

(1) The difference between rent payable under the rental agreement, and all expenses necessary to obtain equivalent substitute housing for the remainder of the rental term; or

(2) An amount equal to one month's rent and the security deposit.

§5307. Tenant's Remedies relating to the Rental Unit: Repair and Deduction from Rent.

(a) If the landlord of a rental unit fails to repair, maintain, or keep in a sanitary condition the leased premises or perform in any other manner required by statute, Code or ordinance, or as agreed to in the rental agreement; and if after being notified in writing by the tenant to do so the landlord

(i) fails to remedy such failure within thirty (30) days from the receipt of the notice;  
or

(ii) fails to initiate reasonable corrective measures where appropriate, including, but not limited to, the obtaining of an estimate of the prospective costs of the correction, within ten days from the receipt of the notice;

Then the tenant may immediately do or have done the necessary work in a workmanlike manner. After the work is done, the tenant may deduct from his the rent a reasonable sum, not exceeding Two Hundred Dollars (\$200), or one-half of one month's rent, whichever is less for the expenditures by submitting to the landlord copies of those receipts covering at least the sum deducted.

(b) In no event may a tenant repair or cause anything to be repaired at the landlord's expense when the condition complained of was caused by the want of due care by the tenant, a member of the tenant's family, or another person on the premises with the tenant's consent.

(c) A tenant who is otherwise delinquent in the payment of rent may not take advantage of the remedies provided in this section.

(d) The tenant is liable for any damage to persons or property where such damage was caused by the tenant, or by someone authorized by the tenant, in making said repairs.

§5308. Essential Services; Landlord Obligation and Tenant Remedies

(a) If the landlord substantially fails to provide hot water, heat, water, or electricity, to a tenant, or fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's bargain in violation of the rental agreement, or in violation of a provision of this Code; or in violation of an applicable housing Code and such failure continues for forty-eight hours or more; after the tenant gives the landlord actual or written notice of the failure, the tenant may:

(1) Upon written notice of the continuation of the problem to the landlord immediately terminate the rental agreement, or

(2) Upon written notice to the landlord, keep two-thirds *per diem* rent accruing during any period when hot water, heat, water, electricity, or equivalent substitute housing is not supplied. The landlord may avoid this liability by a showing of impossibility of performance.

(b) If the tenant has given the notice required under subsection (a) of this section and remains in the rental unit, and the landlord still fails to provide water, hot water, heat, and electricity to the rental unit as specified in the applicable city or county housing Code in violation of the rental agreement, the tenant may:

(1) Upon written notice to the landlord, immediately terminate the rental agreement,

or

(2) Upon notice to the landlord, procure equivalent substitute housing for as long as heat, water, hot water, or electricity is not supplied, during which time the rent shall abate, and the landlord shall be liable for any additional expense incurred by the tenant, up to one half of the amount of abated rent. This additional expense shall not be chargeable to the landlord if landlord is able to show impossibility of performance; or

(3) Upon written notice to the landlord, tenant may withhold two-thirds *per diem* rent accruing during any period when hot water, heat, water or equivalent substitute housing is not supplied.

(c) Rent withholding does not act as a bar to the subsequent recovery of damages by a tenant, if those damages exceed the amount withheld.

(d) Where a landlord files an action for summary possession, claiming that a tenant has wrongfully withheld rent or deducted money from rent under this section, and the Court so finds, the landlord shall be entitled to receive from the tenant either possession of the premises or an amount of money equal to the amount wrongfully withheld ("damages") or, if the court finds the tenant acted in bad faith, an amount of money equal to double the amount wrongfully withheld ("double damages"). In the event the Court awards damages or double damages, and court costs excluding attorneys' fees, then the Court shall issue an order requiring such damages or double damages to be paid by the tenant to the landlord within ten (10) days from the date of the Court's judgment. If such damages are not paid in accordance with the Court's order, the judgment for damages or double damages, together with court costs, shall become a judgment for the amount withheld, plus summary possession, without further notice to the tenant.

§5309. Fire and Casualty Damage; Landlord Obligation and Tenant Remedies.

(a) If the rental unit or any other property or appurtenances necessary to the enjoyment thereof are damaged or destroyed by fire or casualty to an extent that enjoyment of the rental unit is substantially impaired, and such fire or other casualty occurs without fault on the part of the tenant, or a member of the tenant's family, or another person on the premises with the tenant's consent, the tenant may:

(1) Immediately quit the premises and promptly notify the landlord, in writing, of the tenant's election to quit within one week after vacating, in which case the rental agreement shall terminate as of the date of vacating. If the tenant fails to notify the landlord of the tenant's election to quit, the tenant shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's vacating the rental unit or impossibility of further occupancy; or

(2) If continued occupancy is lawful, vacate any part of the premises rendered unusable by fire or casualty, in which case the tenant's liability for rent shall be reduced in proportion to the diminution of the fair rental value of the rental unit.

(b) If the rental agreement is terminated, the landlord shall timely return any security deposit, pet deposit and pre-paid rent, except that to which the landlord is entitled to retain pursuant to this Code. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty

#### §5310. "Assurance Money" Prohibited.

(a) In every transaction wherein an application is made by a prospective tenant to lease a dwelling unit, the prospective landlord or owner of the dwelling unit shall not ask for, nor receive, any "assurance money" or other payment which is not an application fee, security deposit, pet deposit or similar deposit reserving the dwelling unit for the prospective tenant for a time certain. The prospective landlord shall not charge the prospective tenant, as a fee for any credit or other type of investigation, any more than the specific cost of such investigation. For purposes of this section, "assurance money" shall mean any payment to the prospective landlord by a prospective tenant, except an application fee, a payment in the way of a security deposit, pet deposit or similar deposit, reserving the dwelling unit for the prospective tenant for a time certain, or the reimbursing of the specific sums expended by the landlord in credit or other investigations

(b) Each landlord shall retain, for a period of six months, the records of each application made by any prospective tenant. Upon any complaint of a violation of this section, the Consumer Protection Unit of the Attorney General's Office shall investigate the same, shall interview tenants of the landlord and, shall, under appropriate search warrant, have the right to investigate all records of the landlord pertaining to applications made within the preceding six months. If such investigation reveals good cause for the Attorney General's Office to believe there has been a violation of this section, the Attorney General's Office may issue such cease and desist orders in accordance with §2517 of Title 29 as are required to remedy the violation

#### §5311. Fees

Except for an optional service fee for actual services rendered, such as a pool fee, or tennis court fee, a landlord shall not charge to a tenant any non-refundable fee as a condition for occupancy of the rental unit.

#### §5312. Metering and Charges for Utility Services

(a) A landlord may install, operate and maintain meters or other appliances for measurement to determine the consumption of utility services by each rental unit. Only if the rental agreement so provides, and in compliance with this section, may a landlord charge a tenant separately for the utility services as measured by such meter or other appliance. With the exception of metering systems already in use prior to the effective date of this Code, a landlord shall not separately charge a tenant for any utility service, unless such utility service is separately metered. The metering system may be inspected by, and must be approved by the Division of Weights and Measures

(b) No landlord shall require that any tenant contract directly with the provider of a utility service for service to a tenant or to a rental unit, unless such rental unit is separately metered. No landlord who purchases utility services in bulk shall charge any tenant individually for utility services, unless such utility services are either individually metered, or the cost of such services is included as part of each monthly rental payment, as provided for in the rental agreement.

(d) The tenant is liable for any damage to persons or property where such damage was caused by the tenant, or by someone authorized by the tenant, in making said repairs.

§5308 Essential Services; Landlord Obligation and Tenant Remedies.

(a) If the landlord substantially fails to provide hot water, heat, water, or electricity, to a tenant, or fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's bargain in violation of the rental agreement; or in violation of a provision of this Code; or in violation of an applicable housing Code and such failure continues for forty-eight hours or more, after the tenant gives the landlord actual or written notice of the failure, the tenant may:

(1) Upon written notice of the continuation of the problem to the landlord *immediately terminate the rental agreement, or*

(2) Upon written notice to the landlord, keep two-thirds per diem rent accruing during any period when hot water, heat, water, electricity, or equivalent substitute housing is not supplied. The landlord may avoid this liability by a showing of impossibility of performance.

(b) If the tenant has given the notice required under subsection (a) of this section and remains in the rental unit, and the landlord still fails to provide water, hot water, heat, and electricity to the rental unit as specified in the applicable city or county housing Code in violation of the rental agreement, the tenant may:

(1) Upon written notice to the landlord, immediately terminate the rental agreement,  
or

(2) Upon notice to the landlord, procure equivalent substitute housing for as long as heat, water, hot water, or electricity is not supplied, during which time the rent shall abate; and the landlord shall be liable for any additional expense incurred by the tenant, up to one half of the amount of abated rent. This additional expense shall not be chargeable to the landlord if landlord is able to show impossibility of performance; or

(3) Upon written notice to the landlord, tenant may withhold two-thirds per diem rent accruing during any period when hot water, heat, water or equivalent substitute housing is not supplied.

(c) Rent withholding does not act as a bar to the subsequent recovery of damages by a tenant, if those damages exceed the amount withheld.

(d) Where a landlord files an action for summary possession, claiming that a tenant has wrongfully withheld rent or deducted money from rent under this section, and the Court so finds, the landlord shall be entitled to receive from the tenant either possession of the premises or an amount of money equal to the amount wrongfully withheld ("damages") or, if the court finds the tenant acted in bad faith, an amount of money equal to double the amount wrongfully withheld ("double damages"). In the event the Court awards damages or double damages, and court costs excluding attorneys' fees, then the Court shall issue an order requiring such damages or double damages to be paid by the tenant to the landlord within ten (10) days from the date of the Court's judgment. If such damages are not paid in accordance with the Court's order, the judgment for damages or double damages, together with court costs, shall become a judgment for the amount withheld, plus summary possession, without further notice to the tenant.

§5309. Fire and Casualty Damage; Landlord Obligation and Tenant Remedies.

(a) If the rental unit or any other property or appurtenances necessary to the enjoyment thereof are damaged or destroyed by fire or casualty to an extent that enjoyment of the rental unit is substantially impaired, and such fire or other casualty occurs without fault on the part of the tenant, or a member of the tenant's family, or another person on the premises with the tenant's consent, the tenant may:

(1) Immediately quit the premises and promptly notify the landlord, in writing, of the tenant's election to quit within one week after vacating, in which case the rental agreement shall terminate as of the date of vacating. If the tenant fails to notify the landlord of the tenant's election to quit, the tenant shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's vacating the rental unit or impossibility of further occupancy; or

(2) If continued occupancy is lawful, vacate any part of the premises rendered unusable by fire or casualty, in which case the tenant's liability for rent shall be reduced in proportion to the diminution of the fair rental value of the rental unit.

(b) If the rental agreement is terminated, the landlord shall timely return any security deposit, pet deposit and pre-paid rent, except that to which the landlord is entitled to retain pursuant to this Code. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

#### §5310 "Assurance Money" Prohibited.

(a) In every transaction wherein an application is made by a prospective tenant to lease a dwelling unit, the prospective landlord or owner of the dwelling unit shall not ask for, nor receive, any "assurance money" or other payment which is not an application fee, security deposit, pet deposit or similar deposit reserving the dwelling unit for the prospective tenant for a time certain. The prospective landlord shall not charge the prospective tenant, as a fee for any credit or other type of investigation, any more than the specific cost of such investigation. For purposes of this section "assurance money" shall mean any payment to the prospective landlord by a prospective tenant, except an application fee, a payment in the way of a security deposit, pet deposit or similar deposit, reserving the dwelling unit for the prospective tenant for a time certain, or the reimbursing of the specific sums expended by the landlord in credit or other investigations.

(b) Each landlord shall retain, for a period of six months, the records of each application made by any prospective tenant. Upon any complaint of a violation of this section, the Consumer Protection Unit of the Attorney General's Office shall investigate the same, shall interview tenants of the landlord and, shall, under appropriate search warrant, have the right to investigate all records of the landlord pertaining to applications made within the preceding six months. If such investigation reveals good cause for the Attorney General's Office to believe there has been a violation of this section, the Attorney General's Office may issue such cease and desist orders in accordance with §2517 of Title 29 as are required to remedy the violation.

#### §5311 Fees

Except for an optional service fee for actual services rendered, such as a pool fee, or tennis court fee, a landlord shall not charge to a tenant any non-refundable fee as a condition for occupancy of the rental unit.

#### §5312 Metering and Charges for Utility Services

(a) A landlord may install, operate and maintain meters or other appliances for measurement to determine the consumption of utility services by each rental unit. Only if the rental agreement so provides, and in compliance with this section, may a landlord charge a tenant separately for the utility services as measured by such meter or other appliance. With the exception of metering systems already in use prior to the effective date of this Code, a landlord shall not separately charge a tenant for any utility service, unless such utility service is separately metered. The metering system may be inspected by, and must be approved by the Division of Weights and Measures.

(b) No landlord shall require that any tenant contract directly with the provider of a utility service for service to a tenant or to a rental unit, unless such rental unit is separately metered. No landlord who purchases utility services in bulk shall charge any tenant individually for utility services, unless such utility services are either individually metered, or the cost of such services is included as part of each monthly rental payment, as provided for in the rental agreement.

(c) A landlord who charges a tenant separately for utility services under this section shall not charge the tenant an amount for such services which exceeds the actual cost of the utility service as determined by the cost of the service charged by the provider to the landlord, or to any company owned in whole or in part by the landlord.

(d) Any tenant who is charged and who pays for utility services separately to the landlord shall be entitled to inspect the bills and records upon which such charges were calculated, during the landlord's regular business hours at the landlord's regular business office. A landlord shall retain such bills and records for one year from the date upon which tenants were billed.

(e) Charges for utility services made by a landlord to a tenant shall be considered rent for all purposes under this Code. With respect to security deposits, and unless the rental agreement otherwise provides, the rights and obligations of the parties as to payment and nonpayment of utility charges shall be enforced in the same manner as the rights and obligations of the parties relating to payment and nonpayment of rent. A landlord shall not discontinue or terminate utility service for nonpayment of rent, utility charges, or other breach.

(f) A landlord who charges separately for utilities in accordance with this section shall bill the tenant for such charges not less frequently than monthly, and shall use reasonable efforts to obtain actual readings of meters or appliances for measurements, which readings shall reasonably coincide with the landlord's bulk billing. If, despite reasonable effort, a landlord is unable to obtain an actual reading, the landlord may estimate the tenant's utility consumption, and bill the tenant for such estimated amount; provided however, that a landlord may not send more than two consecutive estimated billings. Notwithstanding the foregoing, an actual reading shall be made upon the commencement of the lease, and at the expiration or termination of the lease.

(g) (1) A landlord, upon request by a tenant, shall cause to be examined or tested the meter or appliance for measurement. If the meter or appliance so tested or examined is found to be accurate within commercially reasonable limits, the costs and expenses of such test or examination shall be paid by the tenant as additional rent; but if the meter or appliance is found to be not accurate, then such costs and expenses shall be borne by the landlord, who shall forthwith replace the inaccurate meter or other appliance.

(2) In addition to those rights and powers vested by law in the Consumer Protection Unit of the Attorney General's Office or its successor agency, the Attorney General's Office may enter, by and through its agents, experts or examiners, upon any premises for the purpose of making the examination and tests provided for in this section, and may set up and use on such premises any apparatus and appliances necessary therefor.

(h) A landlord who installs, operates and maintains meters or other appliances for measurement, and who bills tenants separately for utilities, shall not be deemed a public utility, nor shall the Public Service Commission have any authority, power or jurisdiction over such landlords or their practices in connection with the installation, operation and maintenance of meters or other appliances for measurement, the reading of meters, calculation and determination of charges for utility services, or otherwise. The Consumer Protection Unit of the Attorney General's Office shall have authority to enforce this section.

#### §5313. Unlawful Ouster or Exclusion of Tenant.

If removed from the premises or excluded therefrom by the landlord or the landlord's agent, except under color of a valid Court order authorizing such removal or exclusion, the tenant may recover possession or terminate the rental agreement. The tenant may also recover treble the damages sustained, or an amount equal to three times the *per diem* rent for the period of time the tenant was excluded from the unit, whichever is greater, and the costs of the suit excluding attorneys' fees.

#### §5314. Tenant's Right to Early Termination.

(a) Except as is otherwise provided in this Code, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease and all parties shall thereupon discharge any remaining obligations as soon as is practicable.

(b) Upon thirty days' written notice, which thirty-day period shall begin on the first day of the month following the day of actual notice, the tenancy may be terminated:

(1) By the tenant, whenever a change in location of the tenant's employment with the tenant's present employer requires a change in the location of the tenant's residence in excess of thirty miles;

(2) By the tenant, whenever the serious illness of the tenant or the death or serious illness of a member of the tenant's immediate family, residing therein, requires a change in the location of the tenant's residence on a permanent basis;

(3) By the tenant, when the tenant is accepted for admission to a senior citizens' housing facility, including subsidized public or private housing, or a group or cooperative living facility or retirement home;

(4) By the tenant, when the tenant is accepted for admission into a rental unit subsidized by a governmental entity, or by a private non-profit corporation, including subsidized private or public housing;

(5) By the tenant who, after the execution of such rental agreement, enters the military service of the United States on active duty; or

(6) By the surviving spouse or personal representative of the estate of the tenant, upon the death of the tenant.

Section 3. Amend Chapter 55, Part III, Title 25 of the Delaware Code by striking said Chapter in its entirety, and substituting in lieu thereof the following:

#### CHAPTER 55. TENANT OBLIGATIONS AND LANDLORD REMEDIES

##### §5501 Tenant Obligations; Rent.

(a) The landlord and tenant shall agree to the consideration for rent. In the absence of such agreement, the tenant shall pay to the landlord a reasonable sum for the use and occupation of the rental unit.

(b) Rent shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the beginning of any term for one month or less, while one month's rent shall be payable at the beginning of each month of a longer term.

(c) Except for purposes of payment, rent shall be uniformly apportioned from day to day.

(d) Where the rental agreement provides for a late charge payable to the landlord for rent not paid at the agreed time, such late charge shall not exceed five percent (5%) of the monthly rent. A late charge is considered as additional rent for the purposes of this Code. The late charge shall not be imposed within five days of the agreed time for payment of rent. The landlord shall, in the county in which the rental unit is located, maintain an office or other permanent place for receipt of payments, where rent may be timely paid. Failure to maintain such an office, or other permanent place of payment where rent may be timely paid, shall extend the agreed on time for payment of rent by three days beyond the due date.

(e) If a landlord accepts a cash payment for rent, the landlord shall, within fifteen days, give to the tenant a receipt for that payment. The landlord shall, for a period of three years, maintain a record of all cash receipts for rent.

##### §5502 Landlord Remedies for Failure to Pay Rent.

(a) A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed demand payment thereof, and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than five days after the date notice was given or sent the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter

bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

(b) A landlord or the landlord's agent may bring an action for rent alone at any time after the landlord has demanded payment of past-due rent, and has notified the tenant of the landlord's intention to bring such an action. This action may include late charges, which have accrued as additional rent.

(c) If a tenant pays all rent due before the landlord has initiated an action against the tenant and the landlord accepts such payment without a written reservation of rights, the landlord may not then initiate an action for summary possession or for failure to pay rent.

(d) If a tenant pays all rent due after the landlord has initiated an action for non-payment or late payment of rent against the tenant, and the landlord accepts such payment without a written reservation of rights, then the landlord may not maintain that action for past due rent.

#### §5503. Tenant Obligations Relating to Rental Unit, Waste

(a) A tenant shall

(1) Comply with all obligations imposed upon tenants by applicable provisions of all municipal, county and state Codes, regulations, ordinances, and statutes;

(2) Keep that part of the premises which the tenant occupies and uses as clean and safe as the conditions of the premises permit;

(3) Dispose from the rental unit all ashes, rubbish, garbage and other organic or flammable waste, in a clean and safe manner;

(4) Keep all plumbing fixtures used by the tenant as clean and safe as their condition permits.

(5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances in the premises;

(6) Not willfully or wantonly destroy, deface, damage, repair or remove any part of the structure or rental unit or the facilities, equipment or appurtenances thereto, nor permit any person on the premises with the tenant's permission to do any such thing; and

(7) Comply with all covenants, rules, requirements and the like which are in accordance with §5511 and 5512, and which the landlord can demonstrate are reasonable, necessary for the preservation of the property and persons of the landlord, other tenant, or any other person.

#### §5504. Defense to an Action for Waste

(a) It shall be a complete defense to any action, suit, or proceeding for waste if the tenant alleges and establishes that the tenant notified the landlord a reasonable time in advance of the repair, alteration or replacement and that such repair, alteration or replacement:

(1) Is one which a prudent owner of an estate in fee simple absolute of the affected property would be likely to make in view of the conditions existing on or in the neighborhood of the affected property; or

(2) Has not reduced the market value of the reversion or other interest of the plaintiff; and

(3) If the conditions set forth in (a)(1) or (a)(2) of this section exist, and the landlord makes a demand that the tenant posts security to protect against a failure to complete the proposed work, and against any responsibility for expenditures incident to the making of such proposed repairs, alterations or replacements as the Court demands.

(b) This section shall not be interpreted to bar an action for damages for breach of a written rental agreement, nor bar an action or summary proceeding based on breach of a written rental agreement.

§5505 Tenant's Obligation Relating to Defective Conditions.

(a) Any defective condition of the premises which comes to the tenant's attention, and which the tenant has reason to believe is the duty of the landlord, or of another tenant to repair, shall be reported in writing by the tenant to the landlord as soon as is practicable. The tenant shall be responsible for any liability or injury resulting to the landlord as a result of the tenant's failure to timely report such condition.

(b) A tenant on whom a complaint in ejectment or an action against the premises is served shall immediately notify the landlord, in writing

(c) The provisions of this section shall not apply where the landlord has actual notice of the defective condition.

§5506 Tenant Obligation, Notice of Extended Absence

The landlord may require, in the rental agreement, that the tenant notify the landlord in writing of any anticipated extended absence from the premises no later than the first day of such absence

§5507 Landlord Remedies for Absence or Abandonment

(a) If the rental agreement provides for notification to the landlord by the tenant of an anticipated extended absence as defined in this Code or in the rental agreement, and the tenant fails to comply with such requirement, the tenant shall indemnify the landlord for any harm resulting from such absence.

(b) The landlord may, during any extended absence of the tenant, enter the rental unit as is reasonably necessary for inspection, maintenance, and safekeeping.

(c) Unless otherwise agreed to in the rental agreement, the tenant shall use the rental unit only as the tenant's abode. A violation of this covenant shall constitute the breach of a rule under §5511 of this Code, and shall entitle the landlord to proceed as specified elsewhere in this chapter

(d) If the tenant wrongfully quits the rental unit, and unequivocally indicates by words or deeds the tenant's intention not to resume tenancy, such action by the tenant shall entitle the landlord to proceed as specified elsewhere in this chapter and the tenant shall be liable for the lesser of the following for such abandonment

(1) The entire rent due for the remainder of the term and expenses for actual damages caused by the tenant (other than normal wear and tear) which are incurred in preparing the rental unit for a new tenant, or

(2) All rent accrued during the period reasonably necessary to re-rent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior rental agreement, plus expenses incurred to re-rent; repair damage caused by the tenant, (beyond normal wear and tear); plus a reasonable commission, if incurred by the landlord for the re-renting of the premises. In any event the landlord has a duty to mitigate damages.

(c) If there is no appeal from a judgment granting summary possession under subsection (c) or (d) the landlord may immediately remove and store, at the tenant's expense, any and all items left on the premises by the tenant. Seven days after the appeal period has expired the property shall be deemed abandoned, and may be disposed of by the landlord without further notice or liability.

§5508. Landlord Remedies; Restrictions on Subleasing and Assignments.

(a) Unless otherwise agreed in writing, the tenant may sublet the premises or assign the rental agreement to another

(b) The rental agreement may restrict or prohibit the tenant's right to assign the rental agreement in any manner. The rental agreement may restrict the tenant's right to sublease the premises, by conditioning such right on the landlord's consent. Such consent shall not be unreasonably withheld.

(c) In any proceeding under this section to determine whether or not consent has been unreasonably withheld; the burden of showing reasonableness shall be on the landlord.

§5509. Tenant Obligation to Permit Reasonable Access.

(a) The tenant shall not unreasonably withhold consent for the landlord to enter into the rental unit in order to inspect the premises, make necessary repairs, decorations, alterations, or improvements, supply services as agreed to or exhibit the rental unit to prospective purchasers, mortgagees or tenants. A tenant shall have a the right to install a new lock at the tenant's cost, on the condition that:

- (1) The tenant notifies the landlord in writing and supplies the landlord with a key to the lock;
- (2) The new lock fits into the system already in place; and
- (3) The lock installation does not cause damage to the door.

(b) The landlord shall not abuse this right of access, nor use it to harass a tenant. The landlord shall give the tenant at least forty-eight hours notice of landlord's intent to enter, except for repairs requested by the tenant, and shall enter only between 8:00 a.m. and 9:00 p.m. As to prospective tenants or purchasers only, the tenant may expressly waive in a signed addendum to the rental agreement or other separate signed document, the requirement that the landlord provide forty-eight hours notice prior to the entry into the premises. In the case of an emergency the landlord may enter at any time.

(c) The tenant shall permit the landlord to enter the rental unit at reasonable times in order to obtain readings of meters or appliances for measurement of utility consumption in accordance with §5312 of this title.

§5510. Landlord Remedy for Unreasonable Refusal to Allow Access.

(a) The tenant shall be liable to the landlord for any harm proximately caused by the tenant's unreasonable refusal to allow access. Any Court of competent jurisdiction may issue an injunction against a tenant who has unreasonably withheld access to the rental unit.

(b) The landlord shall be liable to the tenant for any theft, casualty or other harm proximately resulting from an entry into the rental unit by landlord, its employees, or agents or with landlord's permission or license:

- (1) When the tenant is absent, and has not specifically consented to the entry;
- (2) Without the tenant's actual consent when tenant is present and able to consent;  
and
- (3) In any other case, where the harm suffered by the tenant is due to the landlord's negligence.

(c) Repeated demands for unreasonable entry, or any actual entry which is unreasonable and not consented to by the tenant, may be treated by the tenant as grounds for termination of the rental agreement. Any Court of competent jurisdiction may issue an injunction against such unreasonable demands on behalf of one or more tenants.

(d) Every agreement or understanding between a landlord and a tenant which purports to exempt the landlord from any liability imposed by this section, except consent to a particular entry, shall be null and void.

§5511. Rules and Regulations; Tenant Obligations.

(a) The tenant and all others in the premises with the consent of the tenant, shall obey all obligations or restrictions, whether denominated by the landlord as "rules", "regulations", "restrictions" or otherwise, concerning the tenant's use, occupation and maintenance of the rental unit, appurtenances thereto, and the property of which the rental unit is a part, if:

(1) Such obligations and restrictions promote the health, safety, quiet, private enjoyment or welfare, peace and order of the tenants; promote the preservation of the landlord's property from abuse; and promote the fair distribution of services and facilities provided for all tenants generally; and

(2) Such obligations and restrictions are brought to the attention of the tenant at the time of the tenant's entry into the agreement to occupy the rental unit; and

(3) Such obligations and restrictions are reasonably related to the purpose for which they are promulgated; and

(4) Such obligations and restrictions apply to all tenants of the property in a fair manner; and

(5) Such obligations and restrictions are sufficiently explicit in the prohibition, direction or limitation of the tenant's conduct to fairly inform tenant of what tenant must or must not do to comply; and

(6) Such obligations or restrictions, if not made known to the tenant at the commencement of tenancy, are brought to the attention of the tenant and if said obligations work a substantial modifications of the lease agreement they have been consented to in writing by tenant.

(b) All tenants and other guests of the premises with the consent of tenant shall conduct themselves in a manner that does not unreasonably interfere with the peaceful enjoyment of the other tenants.

§5512. Rules and Regulations Relating to Certain Buildings; Landlord Remedies.

Any provision of the Landlord-Tenant Code to the contrary notwithstanding, all rental agreements for the rental of single rooms in certain buildings may be terminated immediately upon notice to the tenant for a tenant's material violation of a regulation which has been given to a tenant at the time of contract or lease, and the landlord shall be entitled to bring a proceeding for possession where:

(1) The building is the primary residence of the landlord; and

(2) No more than three rooms in the building are rented to tenants; and

(3) No more than three tenants occupy such building.

§5513. Landlord Remedies Relating to Breach of Rules and Covenants.

(a). If the tenant breaches any rule or covenant which is material to the rental agreement, the landlord shall notify the tenant of such breach, in writing, and shall allow at least seven (7) days after such notice for remedy or correction of the breach. This section shall not apply to late payment of rent which is covered under §5502 hereof.

(1) Such notice shall substantially specify the rule allegedly breached and advise the tenant that, if the violation continues after seven (7) days, the landlord may terminate the rental agreement and bring an action for summary possession. Such notice shall also state that it is given pursuant to 25 Del. Code §5513, and if the tenant commits a substantially similar breach within one year, the landlord may rely upon such notice as grounds for initiating an action for summary possession. The issuance of a notice

pursuant to this section does not establish that the initial breach of the rental agreement actually occurred for purposes of this section.

(2) If the tenant's breach can be remedied by the landlord, as by cleaning, repairing, replacing a damaged item, or the like, the landlord may so remedy the tenant's breach and bill the tenant for the actual and reasonable costs of such remedy. Such billing shall be due and payable as additional rent, immediately upon receipt.

(3) If the tenant's breach of a rule or covenant also constitutes a material breach of an obligation imposed upon tenants by a municipal, county or state Code, ordinance or statute, the landlord may terminate the rental agreement and bring an action for summary possession.

(b) When a breach by a tenant causes or threatens to cause irreparable harm to any person or property, or the tenant is convicted of a class A misdemeanor or felony during the term of the tenancy which caused or threatened to cause irreparable harm to any person or property the landlord may, without notice, remedy the breach and bill the tenant as provided in subsection (a) of this section; immediately terminate the rental agreement upon notice to the tenant and bring an action for summary possession; or do both.

(c) Upon notice to tenant, the landlord may bring an action or proceeding for waste or for breach of contract for damages suffered by the tenant's willful or negligent failure to comply with tenant's responsibilities under the preceding section. The landlord may request a forthwith summons.

#### §5514. Security Deposit.

(a) (1) A landlord may require the payment of security deposit.

(2) No landlord may require a security deposit in excess of one month's rent where the rental agreement is for one year or more.

(3) No landlord may require a security deposit in excess of one month's rent, (with the exception of federally-assisted housing regulations), for primary residential tenancies of undefined terms or month to month, where the tenancy has lasted one year or more. After the expiration of one year, the landlord shall immediately return, as a credit to the tenant, any amount in excess of one month's rent.

(4) The security deposit limits set forth above, shall not apply to furnished rental units.

(b) Each security deposit shall be placed by the landlord in an escrow bank account in a federally-insured banking institution with an office that accepts deposits within the State of Delaware. Such account shall be designated as a security deposits account, and shall not be used in the operation of any business by the landlord. The landlord shall disclose to the tenant the location of the security deposit account. The security deposit principal shall be held and administered for the benefit of the tenant, and the tenant's claim to such money shall be prior to that of any creditor of the landlord, including but not limited to a trustee in bankruptcy, even if such money is commingled.

(c) The purpose of the security deposit shall be:

(1) To reimburse the landlord for actual damages caused to the premises by the tenant, which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning; and or

(2) To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant; and or

(3) To reimburse the landlord for all reasonable expenses incurred in renovating and rerenting the premises caused by the premature termination of the rental agreement by

the tenants, which includes termination pursuant to §5314, providing that reimbursement caused by termination pursuant to §5314 shall not exceed one month's rent.

(d) Where a tenant is required to pay a fee to determine the tenant's credit worthiness, such fee is an application fee. A landlord may charge an application fee not to exceed the greater of either ten percent (10%) of the monthly rent for the rental unit, or fifty dollars (\$50.00), to determine a tenant's credit worthiness. The landlord shall, upon receipt of any money paid as an application fee, furnish a receipt to the tenant for the full amount paid by the tenant, and shall maintain for a period of at least two years, complete records of all application fees charged, and amounts received for each such fee. Where the landlord unlawfully demands more than the allowable application fee, the tenant shall be entitled to damages equal to double the amount charged as an application fee by the landlord.

(e) If the landlord is not entitled to all or any portion of the security deposit, the landlord shall remit the security deposit within twenty days of the expiration or termination of the rental agreement.

(f) Within twenty days after the termination or expiration of any rental agreement, the landlord shall provide the tenant with an itemized list of damages to the premises and the estimated costs of repair for each, and shall tender payment for the difference between the security deposit and such costs of repair of damage to the premises. Failure to do so shall constitute an acknowledgment by the landlord that no payment for damages is due. Tenant's acceptance of a payment submitted with an itemized list of damages shall constitute agreement on the damages as specified by the landlord, unless the tenant, within ten days of the tenant's receipt of such tender of payment, objects in writing to the amount withheld by the landlord.

(g) Penalties.

(1) Failure to remit the security deposit or the difference between the security deposit and the amount set forth in the list of damages within 20 days from the expiration or termination of the rental agreement, shall entitle the tenant to double the amount wrongfully withheld.

(2) Failure by a landlord to disclose the location of the security deposit account within twenty days of a written request by a tenant or failure by the landlord to deposit the security deposit in a federally-insured financial institution with an office that accepts deposits within the State of Delaware, shall constitute forfeiture of the security deposit by the landlord to the tenant. Failure by the landlord to return the full security deposit to the tenant within twenty days from the effective date of forfeiture shall entitle the tenant to double the amount of the security deposit.

(h) All communications and notices, including the return of any security deposit under this section shall be directed to the landlord at the address specified in the rental agreement and to the tenant at an address specified in the rental agreement, or to a forwarding address, if provided in writing by the tenant at or prior to the termination of the rental agreement. Failure by the tenant to provide such address shall relieve the landlord of landlord's responsibility to give notice herein and landlord's liability for double the amount of the security deposit as provided herein, but the landlord shall continue to be liable to the tenant for any unused portion of the security deposit, provided the tenant shall make a claim in writing to the landlord within one year from the termination or expiration of the rental agreement.

(i) Pet Deposits.

(1) A landlord may require a pet deposit. Damage to the rental unit caused by an animal shall first be deducted from the pet deposit. Where the pet deposit is insufficient, such damages may be deducted from the security deposit. A pet deposit is subject to subsections (b), (e), (f), (g) and (h), of this section.

(2) No landlord may require a pet deposit in excess of one month's rent, regardless of the duration of the rental agreement.

(3) A landlord may require an additional deposit from a tenant with a pet but shall not require any pet deposit from a tenant if the pet is a duly certified and trained support animal for a disabled person who is a resident of the rental unit.

(j) If the rental agreement so specifies, a landlord may increase the security deposit commensurate with the rent. If the increase of the security deposit will exceed 10% of the monthly rent, payment of the increased security deposit shall be prorated over the term of the rental agreement, except in the case of month-to-month tenancy, in which case payment of the increase shall be prorated over a period of four (4) months.

§5515. Landlord's Remedies Relating to Holdover Tenants.

(a) Except as is otherwise provided in this Code, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease.

(b) Whenever the term of the rental agreement expires, as provided herein, or by the exercise by the landlord of a right to terminate given the landlord under any section of this Code, if the tenant continues in possession of the premises after the date of termination without the landlord's consent, such tenant shall pay to the landlord a sum not to exceed double the monthly rental under the previous agreement, computed and pro-rated on a daily basis, for each day the tenant remains in possession for any period. In addition, the holdover tenant shall be responsible for any further losses incurred by the landlord as determined by a proceeding before any Court of competent jurisdiction.

§5516. Retaliatory Acts Prohibited.

(a) Retaliatory acts are prohibited.

(b) A retaliatory act is an attempt on the part of the landlord to: pursue an action for summary possession or otherwise cause the tenant to quit the rental unit involuntarily;; demand an increase in rent from the tenant;; or decrease services to which the tenant is entitled after:

(1) The tenant has complained in good faith of a conditions in or affecting the rental unit which constitutes a violation of a building, housing, sanitary or other Code or ordinance to the landlord or to an authority charged with the enforcement of such Code or ordinance; or

(2) A State or local government authority has filed a notice or complaint of such violation of a building, housing, sanitary or other Code or ordinance; or

(3) The tenant has organized or is an officer of a tenant's organization; or

(4) The tenant has pursued, or is pursuing, any legal right or remedy arising from the tenancy.

(c) If the tenant proves that the landlord has instituted any of the actions set forth in subsection (b) above within ninety days of any complaints or act as enumerated above, such conduct shall be presumed to be a retaliatory act.

(d) It shall be a defense to a claim that the landlord has committed a retaliatory act, if:

(1) The landlord has given appropriate notice under a section of the landlord-tenant Code which allows a landlord to terminate early;

(2) The landlord seeks in good faith to recover possession of the rental unit for immediate use as landlord's own residence;

(3) The landlord seeks in good faith to recover possession of the rental unit for the purpose of substantially altering, remodeling, or demolishing the premises;

(4) The landlord seeks in good faith to recover possession of the rental unit for the purpose of immediately terminating, for at least six months, use of the premises as a rental unit;

(5) The complaint or request of the landlord relates to a condition or conditions caused by the lack of ordinary care by the tenant or other person in the household, or on the premises with the tenant's consent;

(6) The rental was, on the date of filing of tenant's complaint or request or on the date of appropriate notice prior to the end of the rental term, in full compliance with all Codes, statutes and ordinances;

(7) The landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser conforming to paragraphs (2), (3), or (4) of this subsection;

(8) The landlord is seeking to recover possession of the rental unit on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant prior to the complaint or request;

(9) The condition complained of was impossible to remedy prior to the end of the cure period;

(10) The landlord has become liable for a substantial increase in property taxes, or a substantial increase in other maintenance or operating costs not associated with the landlord complying with the complaint or request, and such liability occurred not less than four months prior to the demand for the increase in rent, and the increase in rent does not exceed the pro-rata portion of the net increase in taxes or cost;

(11) The landlord has completed a substantial capital improvement of the rental unit or the property of which it is a part, not less than 4 four months prior to the demand for increased rent, and such increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the rental units benefited by the improvement;

(12) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar rental units in the same complex, or the landlord can establish that the increase in rent is not directed at the particular tenant as a result of any retaliatory acts.

(c) Any tenant from whom possession of the rental unit has been sought, or who the landlord has otherwise attempted to involuntarily dispossess, in violation of this section, shall be entitled to recover three months rent, or treble the damages sustained by tenant, whichever is greater, together with the cost of the suit but excluding attorneys' fees.

Section 4. Amend Chapter 57, Part III, Title 25 of the Delaware Code by striking said Chapter in its entirety, substituting in lieu thereof the following:

#### "CHAPTER 57. SUMMARY POSSESSION"

##### §5701 Jurisdiction and Venue.

An action for summary possession in accordance with §5702 of this chapter shall be maintained in the Justice of the Peace Court which handles civil cases, and which is closest to the premises or commercial rental unit, and in the same county. For purposes of this Chapter 57, the term "rental agreement" shall include a lease for a commercial rental unit.

##### §5702. Grounds for Summary Proceeding.

Unless otherwise agreed in a written rental agreement, an action for summary possession may be maintained under this chapter because:

(1) The tenant unlawfully continues in possession of any part of the premises after the expiration of the rental agreement without the permission of the landlord or, where a new tenant is entitled to possession, without the permission of the new tenant;

(2) The tenant has wrongfully failed to pay the agreed rent;

(3) The tenant has wrongfully deducted money from the agreed rent;

(4) The tenant has breached a lawful obligation relating to the tenant's use of the premises;

(5) The tenant, employee, servant or agent of the landlord holds over for more than fifteen (15) days after dismissal when the housing is supplied by landlord as part of the compensation for labor or services;

(6) The tenant holds over for more than five (5) days after the property has been duly sold upon the foreclosure of a mortgage, and the title has been duly perfected;

(7) The rightful tenant of the rental unit has been wrongfully ousted;

(8) The tenant refuses to yield possession of the rental unit rendered partially or wholly unusable by fire or casualty, and the landlord requires possession for the purpose of effecting repairs of the damage;

(9) The tenant is convicted of a class A Misdemeanor or any Felony, during the term of tenancy, which caused or threatened to cause irreparable harm to any person or property; or

(10) A rental agreement for a commercial rental unit provides grounds for an action for summary possession to be maintained.

(11) Or, if and only if, it pertains to Mobile Home lots, for any of the grounds set forth in the Mobile Home Lots and Leases Act, as amended.

§5703. Who may maintain proceeding.

The proceeding may be initiated by:

- (1) The landlord;
- (2) The owner;
- (3) The tenant who has been wrongfully put out or kept out;
- (4) The next tenant of the premises, whose term has begun;
- (5) The tenant.

§5704. Commencement of action and notice of complaint.

(a) The proceeding shall be commenced by filing a complaint for possession with the Court.

(b) Upon commencement of an action, the Court shall issue the process specified in the praecipe and shall cause service of the complaint on the defendant, together with a notice stating the time and place of the hearing. The notice shall further state that if the defendant shall fail at such time to appear and defend against the complaint, defendant may be precluded from afterwards raising any defense or a claim based on such defense in any other proceeding or action.

(c) The party requesting the issuance of process may file a motion for the appointment of a special process server, consistent with Justice of the Peace Court Civil Rules. The party requesting the appointment of a special process server may prepare a form of order for signature by the clerk of Court under the seal of the Court. Blank forms for a motion for the appointment of a special

process server, and for an order appointing such a special process server shall be provided by the clerk of the Court on request of the party.

§5705. Service and filing of notice.

(a) The notice of hearing and the complaint shall be served at least five (5) days and not more than thirty (30) days before the time at which the complaint is to be heard.

(b) The notice and complaint, together with proof of service thereof, shall be filed with the Court before which the complaint is to be heard prior to the hearing, and in no event later than five (5) days after service. If service has been made by certified or registered mail, the return receipt, signed, refused or unclaimed, shall be proof of service.

(c) Service of the notice and complaint may be made in any manner consistent with either §5704 or §5706.

§5706. Manner of service.

(a) Service of the notice of hearing and complaint shall be made in the same manner as personal service of a summons in an action.

(b) If service cannot be made in such manner, it shall be made by leaving a copy of the notice and complaint personally with a person of suitable age and discretion who resides or is employed in the rental unit.

(c) If no such person can be found after a reasonable effort, service may be made:

(1) Upon a natural person, by affixing a copy of the notice and complaint upon a conspicuous part of the rental unit within one (1) day thereafter, and by sending by either certified mail, or first class mail with certificate of mailing, using U.S. Postal Service Form 3817 or its successor, an additional copy of each document to the rental unit and to any other address known to the person seeking possession as reasonably chosen to give actual notice to the defendant; or

(2) If defendant is an artificial entity, pursuant to Supreme Court Rule 57, by sending by certified mail or by sending by first class mail with certificate of mailing, using U.S. Postal Service Form 3817 or its successor, within one (1) day after affixation additional copies of each document to the rental unit and to the principal place of business of such defendant, if known, or to any other place known to the party seeking possession as reasonably chosen to effect actual notice.

(d) Service pursuant to this section shall be considered actual or statutory notice.

§5707 Contents of complaint generally.

The complaint shall:

(1) State the interest of the plaintiff in the rental unit from which removal is sought;

(2) State the defendant's interest in the rental unit and his defendant's relationship to the petitioner with regard thereto;

(3) Describe the rental unit from which removal is sought;

(4) State the facts upon which the proceeding is based and attach a copy of any written notice of the basis of the claim as an exhibit to the complaint; and

(5) State the relief sought which may include a judgment for rent due if the notice of complaint contains a conspicuous notice that such demand has been made.

§5708. Additional contents of certain complaints.

If possession of the rental unit is sought on the grounds that the tenant has violated or failed to observe a lawful obligation in relation to tenants use and enjoyment of the rental unit, the complaint shall in addition to the requirements of the foregoing section:

(1) Set forth the rule, or provision of the rental agreement allegedly breached, together with the date the rule, was made known to the tenant and a copy of the rule or provision as initially provided to the tenant, and the manner in which such rule or provision was made known to the tenant;

(2) Allege with specificity the facts constituting a breach of the rule or provision of the rental agreement and that notice or warning as required by law was given to the tenant;

(3) Set forth the facts constituting a continued or recurrent violation of the rule or provision of the rental agreement;

(4) Set forth the purpose served by the rule or provision of the rental agreement allegedly breached;

(5) Allege that where the rule, is not a part of the rental agreement or any other agreement of the landlord and tenant at the time of the formation of the rental agreement, that it does not work a substantial modification of the tenant's bargain, or, if it does, that the tenant consented knowingly in writing to the rule; and

§5709. Answer.

At the time when the petition is to be heard, the defendant, or any person in possession or claiming possession of the rental unit, may answer, orally or in writing. If the answer is oral, the substance thereof shall be endorsed on the complaint. The answer may contain any legal or equitable defense or counter-claim, not to exceed the jurisdiction of the Court.

§5710. Trial.

Where triable issues of fact are raised, they shall be tried by the Court. At the time when an issue is joined, the Court, at the application of either party, and upon proof to its satisfaction by affidavit or orally that an adjournment is necessary to enable the applicant to procure necessary witnesses or evidence, or by consent of all the parties who appear, may adjourn the trial, but not more than ten (10) days except by consent of all parties.

§5711. Judgment.

(a) The Court shall enter a final judgment determining the rights of the parties. The judgment shall award to the successful party the costs of the proceeding.

(b) The judgment shall not bar an action, proceeding or counterclaim commenced or interposed within sixty (60) days of entry of judgment, for affirmative equitable relief which was not sought by counterclaim in the proceeding because of the limited jurisdiction of the Court.

(c) If the proceeding is founded upon an allegation of forcible entry or forcible holding out, the Court may award to the successful party a fixed sum as damages, in addition to the costs.

§5712. Default Judgment.

(a) No judgment for the plaintiff shall be entered unless the Court is satisfied, upon competent proof, that the defendant has received actual notice of the proceeding, or, having abandoned the rental unit, cannot be found within the jurisdiction of the Court after the exercise of reasonable diligence. Posting and first-class mail, as evidenced by a certificate of mailing, is acceptable as actual notice for the purposes of a default judgment.

(b) A party may within ten (10) days of the entry of a default judgment or a non-suit, file a motion with the Court to vacate the judgment, and if after a hearing on the motion the Court finds that the party has satisfied the requirements of Justices of the Peace Civil Rule 20 (b), it shall grant the motion and permit the parties to elect a trial before a single judge or a jury trial.

§5713. Jury Trials.

(a) In any civil action commenced pursuant to this Chapter the plaintiff may demand a trial by jury at the time the action is commenced, and the defendant may demand a trial by jury within ten (10) days after being served. Upon receiving a timely demand, the justice shall appoint six (6) impartial persons of the county in which the action was commenced to try the cause. In making such appointments, the justice shall appoint such persons from the jury list being used at time of appointment by the Superior Court in the county where the action was commenced.

(b) The jury shall be sworn or affirmed that they will "faithfully and impartially try the cause pending between the said . . . . . plaintiff and . . . . . defendant and make a true and just report thereupon according to the evidence" and shall hear the allegations of the parties and their proofs. If either party fails to appear before the jury, they may proceed in that party's absence. When the jury or any four (4) of them agree, they shall make a report under their hands and return the same to the justice who shall give judgment according to the report.

(c) If any juror appointed fails to appear or serve throughout the trial the justice may supply a replacement by appointing and qualifying another, but there shall be no trial by jury if the defendant has not appeared.

(d) In all other cases the justice shall hear the case and give judgment according to the right of the matter and the law of the land.

(e) A Chief Magistrate shall have the authority to designate Courts in each county which can accommodate a jury trial.

§5714. Compelling attendance of jurors.

(a) In a proceeding under this chapter, the justice may require the attendance of the jurors the justice appoints, and may issue a summons under hand and seal to a constable for summoning them to appear before the Court.

(b) If any juror duly summoned fails to appear as required, or to be qualified and serve throughout the trials the juror shall, unless the juror shows to the justice a sufficient excuse, be guilty of contempt, and shall be fined fifty dollars (\$50.00) which shall be levied with costs by distress and sale of the juror's goods and chattels by virtue of a warrant by the justice.

(c) The warrant shall be directed to a constable in the following manner. . . . . County, ss. The State of Delaware

To any constable, greeting:

Whereas, . . . . . of . . . . . has been adjudged by . . . . . one of our justices of the peace, to be guilty of a contempt in making default after due summons as a juror in a case pending before said justice and has been ordered to pay a fine of fifty dollars (\$50.00) in pursuance of the Act of Assembly in such case provided, and

Whereas, the said . . . . . has neglected to pay the said sum, we therefore command you to levy the said sum of fifty dollars (\$50.00) with . . . . . costs and your costs hereon by distress and sale of the goods and chattels of the said . . . . . upon due notice given as upon other execution process.

Witness the hand and seal of the said justice the . . . . . day of 19 . . . . .

§5715. Execution of judgment: writ of possession.

(a) Upon rendering a final judgment for plaintiff, but in no case prior to the expiration of the time for the filing of an appeal, or motion to vacate or open the judgment, the Court shall issue a writ of possession directed to the constable or the sheriff of the county in which the property is located, describing the property and commanding the officer to remove all persons and put the plaintiff into full possession.

(b) The officer to whom the writ of possession is directed and delivered shall give at least twenty four (24) hours notice to the person or persons to be removed and shall execute it between the hours of sunrise and sunset.

**MANUFACTURED HOME.** If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to seven (7) days rent, then the Court, through its officers, may extend the notice period, for the removal of the home from the lot, to a maximum period of seven (7) calendar days from the date of posting. In no event may the tenant inhabit the home after the first twenty four (24) hours of the notice period. If the per diem charge above described has been prepaid, and the time for removal has been extended, then seven (7) calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended, by a prepayment of the per diem amount for storage, then twenty four (24) hours after the posting of the writ the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of thirty (30) days, before it can be disposed of through further legal action. The tenant may not remove the home from storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(c) The plaintiff has the obligation to notify the constable to take the steps necessary to put the plaintiff in full possession.

(d) The issuance of a writ of possession for the removal of a tenant cancels the agreement under which the person removed held the premises, and annuls the relationship of landlord and tenant. Plaintiff may recover, by an action for summary possession, any sum of money which was payable at the time when the action for summary possession was commenced, and the reasonable value of the use and occupation to the time when a writ of possession was issued, and for any period of time with respect to which the agreement does not make any provision for payment of rent, including the time between the issuance of the writ and the landlord's actual recovery of the premises.

(e) If, at the time of the execution of the writ of possession, the tenant fails to remove tenant's property and, the landlord shall have the right to and may immediately remove and store such property, for a period of seven (7) days, at tenant's expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this Title, in which case the manufactured home must be stored for a period of thirty (30) days. If at the end of such period the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant. Nothing in this subsection shall be construed to prevent the landlord from suing for both rent and possession at the same hearing.

(1) If there is no appeal from the judgment of summary possession, at the time of the execution of the writ of possession, and the tenant has failed to remove tenant's property, then the landlord may immediately remove and store such property, for a period of seven (7) days, at tenant's expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this Title, in which case the manufactured home must be stored for a period of thirty (30) days.

(2) If at the end of such period the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

(3) All writs of possession where no appeal has been filed must contain the following language:

**NOTICE WHERE NO APPEAL FILED**

If you do not remove your property from the premises within twenty four (24) hours, then the landlord may immediately remove and store your property for a period of seven (7) days at your expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this Title, in which case the manufactured home must be stored for a period of thirty (30) days. If you fail to claim your property and reimburse the landlord prior to the expiration of the seven (7) day period, then the landlord may dispose of your property without any further legal action.

**MANUFACTURED HOME.** If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to seven (7) days rent, then the Court, through its officers, may extend the notice period, for the removal of the home from the lot, to a maximum period of seven (7) calendar days from the date of posting. In no event may the tenant inhabit the home after the first twenty four (24) hours of the notice period. If the per diem charge above described has been prepaid, and the time for removal has been extended, then seven (7) calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended, by a prepayment of the per diem amount for storage, then twenty four (24) hours after the posting of the writ the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of thirty (30) days, before it can be disposed of through further legal action. The tenant may not remove the home from storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(f) If at the time of the execution of the writ of possession, an appeal of the judgment of possession has been filed:

(1) If there has been an appeal filed from a judgment of summary possession, at the time of the execution of the writ of possession, and the tenant has failed to remove property within 24 hours, then the landlord may immediately remove and store such property, at the tenant's expense, for a period of seven (7) days after the resolution of the appeal, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this Title, in which case the manufactured home must be stored for a period of thirty (30) days.

(2) If at the end of such period the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

(3) All writs of possession, where an appeal has been filed must contain the following language:

**NOTICE WHERE APPEAL HAS BEEN FILED**

If you do not remove your property from the premises with twenty four (24) hours, then the landlord may immediately remove and store your property until seven (7) days after your appeal has been decided, at your expense. If you fail to claim your property and reimburse the landlord prior to the expiration of the seven (7) day period, then the landlord may dispose of your property without any further legal action.

**MANUFACTURED HOME.** If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to seven (7) days rent, then the Court, through its officers, may extend the notice period, for the removal of the home from the lot, to a maximum period of seven (7) calendar days from the date of posting. In no event may the tenant inhabit the home after the first twenty four (24) hours of the notice period. If the per diem charge above described has been prepaid, and the time for removal has been extended, then seven (7) calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended, by a prepayment of the per diem amount for storage, then twenty four (24) hours after the posting of the writ the home may be removed from the lot

by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of thirty (30) days, before it can be disposed of through further legal action. The tenant may not remove the home from storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(g) Nothing in subsection (d) above shall prevent the landlord from making a claim for rent due from the tenant under the provisions of the lease. The landlord shall have the duty of exercising diligence in landlord's efforts to re-rent the premises. The landlord shall have the burden of showing the exercise of such diligence. The landlord shall have the right to sue for both rent and possession at the same hearing.

(h) Whenever the plaintiff is put into full possession under this chapter it shall be the duty of the plaintiff, at the time actual repossession occurs, to have the locks to the premises changed if said premises are to be further leased out. Any plaintiff who fails to comply with this subsection shall be liable to any new tenant whose person or property is injured as a result of entry to the premises gained by the dispossessed tenant by use of a key still in their possession which fit the lock to the premises at the time of this tenancy.

#### §5716. Stay of proceedings by tenant; Good faith dispute.

When a final judgment is rendered in favor of plaintiff in a proceeding brought against a tenant for failure to pay rent, and the default arose out of a good faith dispute, the tenant may stay all proceedings on such judgment by paying all rent due at the date of the judgment and the costs of the proceeding, or by filing with the Court an undertaking to the plaintiff, with such assurances as the Court shall require, to the effect that defendant will pay such rent and costs within ten (10) days of the final judgment being rendered for the plaintiff. At the expiration of said period, the Court shall issue a writ of possession unless satisfactory proof of payment is produced by the tenant.

#### §5717. Stay of proceedings on appeal.

##### (a) Non-jury trials.

With regard to non-jury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing within five (5) days after judgment a trial de novo before a special Court comprised of three (3) justices of the peace other than the justice of the peace who presided at the trial, as appointed by the Chief Magistrate or a designee, which shall render final judgment, by majority vote, on the original complaint within fifteen (15) days after such request for a trial de novo. No such request shall stay proceedings on such judgment unless the aggrieved party, at the time of making such request, shall execute and file with the Court an undertaking to the successful party, with such bond or other assurances as may be required by the Court, to the effect that the aggrieved party will pay all costs of such proceedings which may be awarded against that party and abide the order of the Court therein, and pay all damages including rent justly accruing during the pendency of such proceedings. All further proceedings in execution of the judgment shall thereupon be stayed.

(b) An appeal taken pursuant to subsection (a) may also include claims and counter-claims not raised in the initial proceeding provided that within five (5) days of the filing of the appeal, the claimant also files a bill of particulars identifying any new issues which claimant intends to raise at the hearing which were not raised in the initial proceeding.

(c) Jury Trials. With regard to jury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing within five (5) days after judgment a review by an appellate Court comprised of three (3) justices of the peace other than the justice of the peace who presided at the jury trial, as appointed by the Chief Magistrate or a designee. This review shall be on the record, and the party seeking the review must designate with particularity the points of law which the party appealing feels were erroneously applied at the trial Court level. The decision on the record shall be by majority vote. No such request shall stay proceedings on such judgment unless the aggrieved party, at the time of making such request, shall execute and file with the Court an undertaking to the successful party, with such bond or other assurances as may be required by the Court, to the effect that the aggrieved party will pay all costs of such proceedings which may be awarded against that party and abide the order of the Court therein, and pay all damages including

rent justly accruing during the pendency of such proceedings. All further proceedings in execution of the judgment shall thereupon be stayed.

(d) The Court shall not issue the writ of possession during the five (5) day appeal period. After the five (5) day appeal period has ended, the Court may issue the writ of possession at the plaintiff's request, if the defendant has filed an appeal but not filed a bond or other assurance or an in forma pauperis request to stay the issuance of the writ of possession. If the plaintiff executes on the writ of possession prior to a determination of the appeal, and the appealing party is ultimately successful, then the plaintiff shall be responsible for reasonable cover damages (including but not limited to the cost of substitute housing or relocation) for the period of the dispossession as a result of the execution of the writ of possession, plus Court costs and fees.

(e) An aggrieved party may appeal in forma pauperis if the Court grants an application for such status. In that event, the Court may waive the filing fee and bond for a trial de novo, a trial on the record or a request to stay the writ of possession.

(f) An appeal taken pursuant to this section may include any issue on which judgment was rendered at the trial Court level, including the issue of back rent due, any other statute to the contrary notwithstanding.

§5718. Proceedings in forma pauperis.

Upon application of a party claiming to be indigent, the Court may authorize the commencement, prosecution or defense of any civil action or civil appeal without pre-payment of fees and costs or security therefore, by a person who makes an affidavit that such person is unable to pay the costs or give security therefore. Such affidavit shall state the nature of the action or defense and the affiant's belief that the affiant is entitled to redress, and shall state sufficient facts from which the Court may make an objective determination of the petitioner's alleged indigence.

The Court may, in its discretion, conduct a hearing on the question of indigence. In any action in which a claim for damages is asserted by a party seeking the benefit of this rule, the prothonotary shall, before entering a dismissal of the claim or satisfaction of any judgment entered therein, require payment of accrued Court costs from any party for whose benefit this rule has been applied, if said party has recovered a judgment in said proceedings or received any funds in settlement thereof. A party, and such party's attorney of record shall file appropriate affidavits in the event a claim is sought to be dismissed without settlement or recovery.

Section 5. Amend Chapter 51, subchapter 1, Title 25 of the Delaware Code by repeating present §6103 of Chapter 61 as new §5120, Chapter 51, Title 25 of the Delaware Code, thereby deleting §6103 Chapter 61, Title 25 of the Delaware Code.

Section 6. Amend Chapter 51, subchapter 1, Title 25 of the Delaware Code by repeating present §6104 of Chapter 61 as new §5121, Chapter 51, Title 25 of the Delaware Code, without deleting §6104.

Section 7. Amend Chapter 53, of Title 25 of the Delaware Code by repeating present §6502 of Chapter 65 as new §5315, Chapter 53, Title 25 of the Delaware Code, without deleting §6104.

Section 8. Amend Chapter 55, Part III, Title 25 of the Delaware Code by repeating present §6501 as new §5517, Chapter 55, Title 25 of the Delaware Code, without deleting §6501.

Section 9. Amend Chapter 61, Title 25 of the Delaware Code by repeating present §6501 as new §6103, Chapter 61, Title 25 of the Delaware Code, without deleting §6501.

Section 10. Amend Chapter 61 Title 25 of the Delaware Code by repeating present §6502 as new §6105, Chapter 61, Title 25 of the Delaware Code, without deleting §6502.

Section 11. Amend Title 25 of the Delaware Code by re-designating present Part IV as new Part VI of said Title 25.

Section 12. Amend Chapter 67, Part III, Title 25 of the Delaware Code by repeating present §6501 as new §6716, Chapter 67, Title 25 of the Delaware Code, and then deleting §6501.

Section 13. Amend Chapter 67, Part III, Title 25 of the Delaware Code by repeating present §6502 as new §6717, Chapter 67, Title 25 of the Delaware Code, and then deleting §6502.

Section 14. Amend Title 25 of the Delaware Code by adding thereto a new Part IV, which new Part IV shall contain Chapter 61, Chapter 63 and Chapter 65; the title to said Part IV shall read as follows:

"PART IV. COMMERCIAL LEASES"

Section 15. Amend Chapter 61, Title 25 of the Delaware Code by striking sections 6101 and 6102 in their entirety, and substituting in lieu thereof the following:

CHAPTER 61. COMMERCIAL LEASES

§6101. Metering and charges for utility services

Whenever any landlord or other person:

(a) Purchases utility service from a public utility and redistributes the same to a tenant in a commercial unit and/or in connection with the operation of that commercial unit (e.g., the operation of the common area); and

(b) Continuously meters the tenant's use in that commercial unit to which it redistributes the utility service and continually meters the common area, such landlord or other person may charge and collect from such tenant, by way of rent or otherwise, an amount not to exceed the amount the tenants would be billed by the public utility for such utility service if the same was directly metered by such public utility.

§6102. Definitions

The following words, terms and phrases, when used in this Part IV, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) "Commercial Unit" shall mean any lot, structure or portion thereof which is occupied or rented for commercial or industrial purposes.

(b) "Landlord" shall mean:

(1) The owner, lessor, or sub-lessor of the rental unit or the property of which it is a part and, in addition, shall mean any person authorized to exercise any aspect of the management of the premises, including any person who, directly or indirectly, receives rents or any part thereof other than as a bona fide purchaser and who has no obligation to deliver the whole of such receipts to another person;

(2) Any person held out by any landlord as the appropriate party to accept performance, whether such person is a landlord or not; or

(3) Any person with whom the tenant normally deals as a landlord; or

(4) Any person to whom the person specified in paragraphs (2) and (3) of this subsection is directly or ultimately responsible.

(c) "Owner" shall mean one or more persons, jointly or severally in whom is vested:

(1) All or part of the legal title to property; or

(2) All or part of the beneficial ownership, usufruct, and a right to present use and enjoyment of the premises.

(d) "Person" shall include an individual, corporation, government or governmental agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common trust, or any other legal or commercial entity.

(c) "Premises" shall mean the rental unit and the structure of which it is a part, and the facilities and appurtenances therein, and ground, areas and facilities held out for the use of tenants generally or whose use by the tenant is promised by the landlord.

(f) "Rental Agreement" shall mean and include all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations or other provisions concerning the use and occupancy of a rental unit.

(g) "Rental Unit" shall mean a commercial unit.

(h) "Tenant" shall mean a person entitled under a rental agreement to occupy a rental unit to the exclusion of others.

Section 16. Amend §6302, Chapter 63, Title 25 of the Delaware Code by striking subsection (a) said section, and substituting in lieu thereof the following:

(a) The claim for distress shall name the tenant as defendant, and shall set forth the name and address of the landlord; the name and address of the tenant; and the facts as to any assignment of the rental agreement, the premises leased, the date of the rental agreement, the term of the rental agreement, the rent required to be paid by the tenant, the amount of rent in arrears and the plaintiff's statement that there is reason to believe the levied property would be disposed of absent the issuance of the levy. The claim for distress shall also set forth facts supporting the plaintiff's reasonable belief that the goods on the leased premises to be levied upon would be disposed of absent the issuance of the writ. The claim for distress shall be made under oath or affirmation by the plaintiff.

Section 17. Amend §6303, Chapter 63, Title 25 of the Delaware Code by striking subsection (a) in its entirety, substituting in lieu thereof the following:

(a) Upon the filing of an action of distress, a Justice of the Peace shall make a determination as to the claim's compliance with the provisions of this Chapter, and upon a determination of compliance, the Court shall promptly issue an order requiring plaintiff to file a cash bond or a bond with surety in such amount and in such form as the Court shall determine and an order to a constable or sheriff of that county directing that all goods on the leased premises be levied upon once plaintiff has filed said bond. A copy of the claim of distress and order of levy shall be served upon each tenant on the leased premises, as provided herein. The order shall also set forth the time and place where the defendant may appear and make answer to the allegations in the claim.

Section 18. Amend §6308, Chapter 63, Title 25 of the Delaware Code by striking subsection (a) in its entirety, substituting in lieu thereof the following:

(a) The defendant in an action of distress may file an answer to the action, setting forth any defenses he defendant may have to the action. The Court shall schedule the hearing to be held promptly after the levy, but not later than five days after the levy. At the hearing, the Court may determine and decide all issues raised, and may issue an order for the sale of the goods, and may make such orders in connection therewith as may be required.

Section 19. Amend §6503 and §6504, chapter 65, title 25 of the Delaware Code by striking the sections in their entirety.

Section 20. Effective Date-Residential. The provisions of this act shall not apply to any residential rental agreement entered into on or before the enactment date of this act, nor to any renewal of such rental agreement after such date, unless by the express written agreement of the parties, except that the provisions of the act that are to become Chapters 57 of Title 25 and Sections 5112, 5113, 5114, 5315 and 5517 of the Code shall also apply to all actions, suits and proceedings commenced after the date of enactment but concerning rental agreements in effect on or after the date of enactment.

Section 21. Effective Date-Commercial. The provisions of this Act shall not apply to any rental agreement for a commercial rental unit in effect before the enactment date of this Act, nor to any renewal of such rental agreement after such date, unless by the express written agreement of the

parties, except that the provisions of this Act which shall become Chapters 57 and 63 of Title 25 of the Delaware Code shall also apply to all actions, suits and proceedings commenced after the date of enactment but concerning rental agreements for a commercial unit in effect on the date of enactment. In addition to Chapter 57, Title 25 of the Delaware Code and Part IV, Title 25 of the Delaware Code, a rental agreement for a commercial unit entered into for a period of one year following the enactment date of this Act, including any renewals of such rental agreement after such date, shall be governed by Chapters 51, 53 and 55 of Title 25 of the Delaware Code, as in effect immediately prior to the enactment date of this Act, subject to the exemption contained in Section 5103(a) of Title 25 of the Delaware Code as in effect immediately prior to the enactment date of this Act.

Section 22. Amend Title 25 of the Delaware Code by adding thereto a new Part V which new Part V shall contain Chapter 67. The title to such Part V shall read as follows:

PART V. AGRICULTURAL LEASES

Approved July 17, 1996

CHAPTER 514

FORMERLY

HOUSE BILL NO. 565  
AS AMENDED BY HOUSE AMENDMENT NO. 1 AND  
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF CHIROPRACTIC.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §700, Chapter 7, Title 24 of the Delaware Code by striking present §700 in its entirety and substituting in lieu thereof the following:

"§700. ~~Purpose of chapter; objectives of Board.~~

The primary objective of the Board of Chiropractic, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered.

The secondary objectives of the Board are to maintain minimum standards of practitioner competency; and, to maintain certain standards in the delivery of services to the public. In meeting its objectives, the Board shall develop standards assuring professional competence; shall monitor complaints brought against practitioners regulated by the Board; shall adjudicate at formal hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against licensees or former licensees.

Throughout the history of chiropractic, there have been distinct philosophical approaches to chiropractic. No action, rule, standard or requirement shall be imposed or interpreted which would restrict a practitioner from licensure as long as the practitioner complies with this Chapter."

Section 2. Amend §701, Chapter 7, Title 24 of the Delaware Code by striking present §701 in its entirety and substituting in lieu thereof the following.

"§701. ~~Chiropractic defined; limitation of chiropractic license.~~

(a) Chiropractic means a drugless system of health care based on the principle that interference with the transmission of nerve impulses may cause disease.

(b) The practice of chiropractic includes, but is not limited to, the diagnosing and locating of misaligned or displaced vertebrae (subluxation complex), using x-rays and other diagnostic test procedures. Practice of chiropractic includes the treatment through manipulation adjustment of the spine and other skeletal structures and the use of adjunctive procedures not otherwise prohibited by this Chapter.

(c) Except as otherwise provided in this Chapter, the practice of chiropractic does not include the use of drugs, surgery, or obstetrical or gynecological examinations or treatment.

(d) All examinations performed by chiropractors shall be in accordance with the protocol and procedures as taught in the majority of accredited chiropractic colleges."

Section 3. Amend subsection (a), §702, Chapter 7, Title 24 of the Delaware Code, by striking the first sentence of said subsection (a) and substituting in lieu thereof the following:

"(a) There is created a State Board of Chiropractic, which shall administer and enforce this chapter, and which shall consist of seven members appointed by the Governor, who are

residents of this State; four of whom shall be licensed to practice chiropractic in this State; and three public members."

Section 4. Amend subsection (b), §702, Chapter 7, Title 24 of the Delaware Code by striking said subsection (b) in its entirety, and substituting in lieu thereof the following:

"(b) Except as provided in subsection (c) of this Section, each member shall serve for a term of three years, and may succeed himself or herself for one additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only one additional full term. Any person appointed to fill a vacancy on the Board shall hold office for the remainder of the unexpired term of the former member. Persons who are members of the Board on the effective date of this Act shall complete their terms of office."

Section 5. Amend subsection (g), §702, Chapter 7, Title 24 of the Delaware Code, by striking the word "his" as it appears in said subsection (g), and substituting the words "his or her" in lieu thereof.

Section 6. Amend §702, Chapter 7, Title 24 of the Delaware Code by adding a new subsection (i) which new subsection shall read as follows:

"(i) The provisions set forth for 'employees' in Chapter 58, Title 29 of the Delaware Code shall apply to all members of the Board, and to all agents appointed or otherwise employed by the Board."

Section 7. Amend subsection (a), §703, Chapter 7, Title 24 of the Delaware Code by striking said subsection (a) in its entirety and substituting in lieu thereof the following:

"(a) The Board annually shall elect a president and secretary. Each officer shall serve for one year and shall not succeed himself or herself in the same office."

Section 8. Amend §704, Chapter 7, Title 24 of the Delaware Code by striking entire §704 and substituting in lieu thereof the following:

"§704. Complaints.

All complaints shall be received and investigated by the Division of Professional Regulation in accordance with §8810, Title 29 of the Delaware Code. The Division shall be responsible for issuing a final written report at the conclusion of its investigation. The Board president shall assign a member of the Board to assist the Division of Professional Regulation with the investigation of the technical aspects of the complaint and shall not discuss any matter of fact or law regarding such investigation with any Board member prior to the final decision of the Board. Such member shall recuse himself or herself from the deliberations on the complaint at any hearing regarding the complaint. If it is determined that a practitioner should be subject to a disciplinary hearing, the Board shall conduct such hearing in accordance with this Chapter and the Administrative Procedures Act.

When it is determined that an individual is engaging in the practice of chiropractic or is using the title 'chiropractor' and is not licensed under the laws of this State, the Board shall notify the Office of the Attorney General for appropriate action."

Section 9. Amend subsection (a), §705, Chapter 7, Title 24 of the Delaware Code by striking said subsection (a) in its entirety and substituting in lieu thereof the following:

"(a) If a complaint is filed with the Board pursuant to §8810 of Title 29 of the Delaware Code, alleging violation of this Chapter, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code."

Section 10. Amend paragraph (4), subsection (a), §706, Chapter 7, Title 24 of the Delaware Code by striking said paragraph (4) in its entirety and substituting in lieu thereof the following:

"(4) Designate the national written examination to be taken by all persons applying for licensure, except those applicants who qualify for licensure by reciprocity;"

Section 11. Amend paragraph (5), subsection (a), §706, Chapter 7, Title 24 of the Delaware Code by striking said paragraph (5) in its entirety and substituting in lieu thereof the following:

"(5) Administer the State practical examination until a national practical examination is available as determined by the Division of Professional Regulation;"

Section 12. Amend paragraph (7), subsection (a), §706, Chapter 7, Title 24 of the Delaware Code by striking said paragraph (7) in its entirety and substituting in lieu thereof the following:

"(7) Refer all complaints from practitioners and the public to the Division of Professional Regulation for investigation pursuant to §8810 of Title 29 of the Delaware Code; and assign a member of the Board to assist the Division in an advisory capacity with the investigation of the technical aspects of the complaint;"

Section 13. Amend paragraph (14), subsection (a), §706, Chapter 7, Title 24 of the Delaware Code by striking present paragraph (14) in its entirety.

Section 14. Amend paragraph (8), subsection (a), §706, Chapter 7, Title 24 of the Delaware Code by striking present paragraph (8) in its entirety, and renumbering each succeeding paragraph accordingly.

Section 15. Amend paragraph (1), subsection (a), §707, Chapter 7, Title 24 of the Delaware Code by striking the word "he" as the same appears in said paragraph (1), and substituting in lieu thereof the words "he or she".

Section 16. Amend paragraph (2), subsection (a), §707, Chapter 7, Title 24 of the Delaware Code by striking the word "he" as the same appears in said paragraph (2), and substituting in lieu thereof the words "he or she".

Section 17. Amend subsection (b), §707, Chapter 7, Title 24 of the Delaware Code by striking the word "him" as the same appears in said subsection (b), and substituting in lieu thereof the words "him or her".

Section 18. Amend subsection (a), §708, Chapter 7, Title 24 of the Delaware Code by striking said subsection (a) in its entirety, and substituting in lieu thereof the following:

"(a) All applicants must provide proof satisfactory to the Board that they have successfully passed Parts I, II and III, and the physiotherapy section of the National Board of Chiropractic Examiners examination administered on a national basis."

Section 19. Amend subsection (c), §708, Chapter 7, Title 24 of the Delaware Code by adding the following sentence to said subsection (c):

"Such practical examination shall be administered by the Board until the national practical examination is available as determined by the Division of Professional Regulation."

Section 20. Amend subsection (d), §708, Chapter 7, Title 24 of the Delaware Code by striking the word "he" as the same appears in said subsection (d), and substituting in lieu thereof the words "he or she".

Section 21. Amend §709, Chapter 7, Title 24 of the Delaware Code by striking the words "; provided, however, that the application fee and the license renewal fee to be charged shall be no less than \$200 for each fee" as the same appear in the first sentence of said §709.

Section 22. Amend subsection (b), §710, Chapter 7, Title 24 of the Delaware Code by striking the words and number "3 times the amount of the reciprocity fee" and substituting in lieu thereof the following: "determined by the Division of Professional Regulation".

Section 23. Amend subsection (c), §710, Chapter 7, Title 24 of the Delaware Code by striking the word "his" as the same appears in said subsection (c), and substituting in lieu thereof the words "his or her".

Section 24. Amend subsection (c), §710, Chapter 7, Title 24 of the Delaware Code by striking the word "active" as the same appears in the second sentence of said subsection, and substituting in lieu thereof the word "inactive".

Section 25. Amend subsection (d), §710, Chapter 7, Title 24 of the Delaware Code by striking the word "he" as the same appears in said subsection (d), and substituting in lieu thereof the words "he or she".

Section 26. Amend §711, Chapter 7, Title 24 of the Delaware Code by adding to said §711 the following sentence: "The Board shall administer the State practical examination until the national practical examination is available as determined by the Division of Professional Regulation."

Section 27. Amend subsection (a), §712, Chapter 7, Title 24 of the Delaware Code by striking said subsection and substituting in lieu thereof the following:

"(a) Practitioners regulated under this Chapter shall be subject to those disciplinary actions set forth in this Section if, after a hearing, the Board finds the practitioner guilty of unprofessional conduct as defined in subsection (b) of this Section."

Section 28. Amend subsection (b), §712, Chapter 7, Title 24 of the Delaware Code by striking said subsection (b) and paragraphs (1), (2), (3) in their entirety and substituting in lieu thereof the following:

"(b) Unprofessional conduct is hereby defined as any of the following acts:

(1) Use of any false, fraudulent or forged statement or document or use of any fraudulent, deceitful, dishonest or unethical practice in connection with any licensing requirements of this Act;

(2) Conviction of a felony;

(3) Any dishonorable or unethical conduct likely to deceive, defraud or harm the public;

(4) The willful violation of the confidential relations and communications of a patient;

(5) The practitioner has employed or knowingly cooperated in fraud or material deception in order to be licensed, or be otherwise authorized to practice chiropractic;

(6) Has excessively used or abused drugs (including alcohol, narcotics or chemicals);

(7) Practice of chiropractic under a false or assumed name;

(8) Use, distribution or prescription for use of dangerous or narcotic drugs;

(9) Solicitation or acceptance of a fee from a patient or other person by fraudulent representation that a manifestly incurable condition can be permanently cured;

(10) Knowing or intentional performance of any act which, unless authorized by the Board of Chiropractic, assists an unlicensed and unauthorized person to practice chiropractic;

(11) The failure to provide adequate supervision to a person working under his or her direction;

(12) Misconduct, incompetence or gross negligence in the practice of chiropractic:

(13) Willful failure to divulge to the Board or any committee or representative thereof, upon its request, information relevant to authorization or competence to practice chiropractic;

(14) The violation of this Chapter, or the violation of an order or regulation of the Board;

(15) Charging a grossly exorbitant fee for professional services rendered;

(16) Suspension, revocation, or refusal to grant a license to practice chiropractic or other disciplinary action taken by the appropriate licensing authority in another state or territory; provided, however, that the underlying grounds for such action in another state or territory have been presented to the Board by either certified record or live testimony and the Board has determined that the facts found by the appropriate authority in the other state constitute unprofessional conduct as that term is defined in paragraphs (1) through (16) of this subsection;"

Section 29. Amend subsection (d), §712, Chapter 7, Title 24 of the Delaware Code by striking said subsection (d) in its entirety and substituting in lieu thereof the following:

"(d) Where a practitioner fails to comply with the Board's request that he or she attend a hearing, the Board may petition the Superior Court to order such attendance, and the said Court or any judge assigned thereto shall have the jurisdiction to issue such order."

Section 30. Amend subsection (f), §712, Chapter 7, Title 24 of the Delaware Code by striking the words "subsections (a) through (e)" in present subsection (f), and substituting in lieu thereof the words "subsection (b)".

Section 31. Amend paragraph (1), subsection (f), §712, Chapter 7, Title 24 of the Delaware Code by striking said paragraph (1), and substituting in lieu thereof the following:

"(1) Restrict the license of a practitioner;"

Section 32. Amend subparagraph c., paragraph (4), subsection (f), §712, Chapter 7, Title 24 of the Delaware Code by striking the word "his" as the same appears in said subparagraph c., and substituting in lieu thereof the words "his or her".

Section 33. Amend subsection (j), §712, Chapter 7, Title 24 of the Delaware Code by striking said subsection (j) in its entirety and renumbering each succeeding subsection accordingly

Section 34. Amend subsection (e), §712, Chapter 7, Title 24 of the Delaware Code by striking said subsection (e) in its entirety and renumbering each succeeding subsection accordingly

Section 35. Amend subsection (2), §713, Chapter 7, Title 24 of the Delaware Code by striking said subsection (2) in its entirety.

Section 36. Amend subsection (1), §713, Chapter 7, Title 24 of the Delaware Code by striking the subsection symbol (1) as the same appears in §713.

Section 37. Amend subsection (a), §714, Chapter 7, Title 24 of the Delaware Code by striking the word "himself" as the same appears in said subsection (a), and substituting in lieu thereof the words "himself or herself"

Section 38. Amend subsection (b), §714, Chapter 7, Title 24 of the Delaware Code by striking the word "his" as the same appears in said subsection (b), and substituting in lieu thereof the words "his or her".

Section 39. Amend §716, Chapter 7, Title 24 of the Delaware Code by striking the word "his" as the same appears in said §716, and substituting in lieu thereof the words "his or her".

Section 40. Amend §717, Chapter 7, Title 24 of the Delaware Code by striking the word "his" as the same appears in said §717, and substituting in lieu thereof the words "his or her".

Section 41. Amend subsection (c), §703, Chapter 7, Title 24 of the Delaware Code by striking the words "A majority of members shall constitute a quorum, and no action shall be taken without the affirmative vote of at least 3 members." as the same appear in said subsection, and substituting in lieu thereof the following:

"A majority of the members shall constitute a quorum for the purpose of transacting business. No disciplinary action shall be taken without the affirmative vote of 4 members of the Board."

Approved July 17, 1996

CHAPTER 515

FORMERLY

HOUSE BILL NO. 378  
AS AMENDED BY HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO EDUCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1076(b), Chapter 10, Title 14 of the Delaware Code by striking the words "clerk of the peace or his or her successor" and inserting in lieu thereof the following:

"the appropriate Department of Elections for each county"

Section 2. Amend § 1076(c), Chapter 10, Title 14 of the Delaware Code by striking the words "clerk of the peace or a person designated by him or her" and inserting in lieu thereof the following:

"the appropriate Department of Elections"

Section 3. Amend § 1076(d), Chapter 10, Title 14 of the Delaware Code by striking the words "clerk of the peace or his or her successor of" and inserting in lieu thereof the following:

"Department of Elections for"

Section 4. Amend § 1076(e), Chapter 10, Title 14 of the Delaware Code by striking the words "levy court or county council of" and inserting in lieu thereof the following:

"Department of Elections for"

Section 5. Amend § 1076(f), Chapter 10, Title 14 of the Delaware Code by striking the words "such recognized school district" and inserting in lieu thereof the following:

"the appropriate Department of Elections"

Section 6. Amend § 1076(g), Chapter 10, Title 14 of the Delaware Code by striking the words "by the recognized school district or districts" and inserting in lieu thereof the following:

"by the Department of Elections that conducts said election(s)"

Section 7. Amend § 1076(h), Chapter 10, Title 14 of the Delaware Code by deleting the subsection in its entirety and inserting in lieu thereof the following:

"(h) In the event there is no contest for the election of school board members, it shall not be required to conduct such an election."

Section 8. Amend § 1078(4), Chapter 10, Title 14 of the Delaware Code by deleting the subsection in its entirety.

Section 9. Amend § 1078(5), Chapter 10, Title 14 of the Delaware Code by deleting the subsection in its entirety and inserting in lieu thereof the following:

"(4) Whether the voter has voted in any other voting place or by absentee ballot in the reorganized school district at this election.

For the purpose of determining whether a person offering to vote at a school election is in fact the person he or she claims to be and is qualified to vote, an election official shall require the

person offering to vote to produce reasonable identification of his or herself and their place of residence in the school district. The said identification may be:

- a. Delaware driver's license
- b. Delaware ID card
- c. Work ID card with photo address
- d. U. S. postal material

Any person failing to produce reasonable identification of his or herself shall not be permitted to vote. If a vote is objected to for the reason that the person offering to vote is not qualified to vote in that school election, its admission or rejection shall be determined according to the opinion of a majority of the election officials assigned to that polling place."

Section 10. Amend § 1079, Chapter 10, Title 14 of the Delaware Code by deleting the section in its entirety.

Section 11. Amend § 1081, Chapter 10, Title 14 of the Delaware Code by deleting the section in its entirety.

Section 12. Amend § 1082, Chapter 10, Title 14 of the Delaware Code by deleting the section in its entirety and inserting in lieu thereof the following:

"§ 1082. Official Record.

Before a ballot is issued to a voter or before a voter is permitted to enter a voting machine, the voter shall complete an affidavit attesting to his or her eligibility to vote in a school election. The said affidavit shall be printed in three (3) copies. The first copy shall be preserved by the appropriate department of elections for one (1) year following the close of the election. The second copy shall be presented to the appropriate school board no later than the close of business on the third day following the close of the election. The third copy shall be maintained in alphabetical order by the appropriate department of elections for one (1) year following the close of the election. At the end of the said year, these documents shall be destroyed."

Section 13. Amend § 1083(e), Chapter 10, Title 14 of the Delaware Code by striking the words "The election officers" and inserting in lieu thereof the following:

"The appropriate Department of Elections"

Section 14. Amend § 1084(a), Chapter 10, Title 14 of the Delaware Code by deleting the section in its entirety and inserting in lieu thereof the following:

"(a) The type and form of the certificate of election and all other school election documents shall be determined by the Commissioner of Elections, and shall be uniform throughout the State."

Section 15. Amend § 1084(b), Chapter 10, Title 14 of the Delaware Code by deleting the section in its entirety and inserting in lieu thereof the following:

"(b) The several Departments of Elections shall have and retain custody of all books, maps, forms, oaths of office and of removal, blanks, instructions and all other records and supplies of every kind or description pertaining to any school election conducted by the respective department for one (1) year following the close of the election."

Section 16. Amend § 1084(c), Chapter 10, Title 14 of the Delaware Code by deleting the section in its entirety.

Section 17. Amend § 1086(a), Chapter 10, Title 14 of the Delaware Code by striking the words "with the school district office at least 1 day prior to the day of the election" and inserting in lieu thereof the following:

"with the appropriate county department of elections by 12:00 noon, local time of the day prior to the election"

Section 18. Amend § 1086(b), Chapter 10, Title 14 of the Delaware Code by striking the words "the school district shall" and inserting in lieu thereof the following:

"the department of elections shall"

Section 19. Amend § 1086(b)(1), Chapter 10, Title 14 of the Delaware Code by striking the words "school district office; or" and inserting in lieu thereof the following:

"appropriate department of elections office; or"

Section 20. Amend § 1086(b)(2), Chapter 10, Title 14 of the Delaware Code by deleting the paragraph in its entirety and inserting in lieu thereof the following:

"(2) Follow the instructions contained within the elector's affidavit to mail the official ballot and instructions to the elector provided that the affidavit is received by the department of elections by at least 12:00 noon, local time, of the fourth day prior to the election."

Section 21. Amend § 1086(b), Chapter 10, Title 14 of the Delaware Code by adding the following paragraph:

"(3) Nothing contained in this subsection shall prevent the issuance of an absentee ballot to those lawfully entitled thereto prior to 12:00 noon, local time, of the day prior to any school election when the request is made less than 3 days prior to the day of the election."

Section 22. Amend § 1086(b), Chapter 10, Title 14 of the Delaware Code by inserting the following paragraph:

"(4) All absentee ballots must be returned to the appropriate department of elections prior to the closing of the polls on the day of the election. All absentee ballots received after the closing of the polls shall be voided and not opened. Each absentee ballot received in this manner shall be stamped with the date and time it was received and initialed by a representative of the department and retained as part of the official election record."

Section 23. Amend § 1072(b), Chapter 10, Title 14 of the Delaware Code by striking the words "The school board of each reorganized school district" in the first sentence and inserting in lieu thereof the following:

"The appropriate Department of Elections office"

Section 24. Amend § 1072(b), Chapter 10, Title 14 of the Delaware Code by striking the words "the school board" in the fourth sentence and inserting in lieu thereof the following:

"the appropriate Department of Elections office"

Section 25. Amend § 1073, Chapter 10, Title 14 of the Delaware Code by deleting it in its entirety and inserting in lieu thereof the following:

"§ 1073. Election Officers.

The appropriate Department of Elections shall appoint election officers as shall be necessary in order to properly staff each designated polling place in the reorganized school district."

Section 26. Amend § 1074(a), Chapter 10, Title 14 of the Delaware Code by striking the words "The clerk of the peace, or his successor," in the first sentence and inserting in lieu thereof the following:

"The Department of Elections"

Section 27. Amend § 1074(c), Chapter 10, Title 14 of the Delaware Code by striking the words "the school board in accordance with this chapter." in the first sentence and inserting in lieu thereof the following:

"the Department of Elections in accordance with this chapter."

Section 28. Amend § 1075(1), Chapter 10, Title 14 of the Delaware Code by deleting the paragraph in its entirety and inserting in lieu thereof the following:

"At least 60 days before the day of the election, nominations shall be filed with the department of elections of the county in which the reorganized school district is located, except that, if a reorganized school district is located in 2 counties, nominations shall be filed with the department of elections of the county in which the office of the superintendent of schools is located. In computing the time period prescribed above, if the last day of the period so computed is a Saturday, a Sunday or a legal holiday, then the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Such notification of candidacy shall be withdrawn on a form promulgated by the Commissioner of Elections and executed at the appropriate department of elections."

Section 29. Amend § 1075(2), Chapter 10, Title 14 of the Delaware Code by deleting the paragraph in its entirety.

Section 30. This Act shall become effective upon the enactment of a formula by the General Assembly to determine the allocation of costs of administering school elections between local school districts and the State, and of specific appropriations to fund the State's share of such allocation.

Approved July 17, 1996

## CHAPTER 516

## FORMERLY

## SENATE BILL NO. 418

AN ACT TO AMEND TITLE 14 AND TITLE 16 OF THE DELAWARE CODE RELATING TO THE HEALTH CARE COMMISSION AND THE DELAWARE INSTITUTE FOR MEDICAL EDUCATION AND RESEARCH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 84, Title 14 of the Delaware Code by striking §8401 through §8409 in their entirety.

Section 2. Amend §9903, Chapter 99, Title 16 of the Delaware Code by redesignating subsection (d) as subsection (e) and by creating a new subsection (d) to read as follows:

"(d) The Commission shall be responsible for the administration of the Delaware Institute of Medical Education and Research (DIMER), which shall serve as an advisory board to the Commission, and the Chair of the Health Care Commission shall appoint the Chair of DIMER. The Commission shall have such other duties and authorities with respect to DIMER which are necessary to carry out the intent of the General Assembly as expressed in this chapter."

Section 3. Amend Chapter 99, Title 16 of the Delaware Code by designating §9901 through §9904 as Subchapter I entitled "Subchapter I. Findings, Organization and Duties of Commission." and creating a new Subchapter II to read as follows:

"Subchapter II. Delaware Institute of Medical Education and Research.

§9905. Findings.

(a) The General Assembly finds and declares that the purpose of the Delaware Institute of Medical Education and Research (DIMER), created in 1969 as an alternative to a state sponsored medical school, is sound and should be continued and strengthened. Delaware should continue to provide opportunities for Delaware residents to receive a medical education, but it would not be a wise use of resources for the State of Delaware to build and maintain a medical school.

(b) The General Assembly finds and declares that the current arrangement between the State of Delaware and Jefferson Medical College of Thomas Jefferson University, which allows Jefferson to function as Delaware's medical school, is extremely valuable to the State and has produced benefits which far surpass the admission of 20 Delaware residents into Jefferson Medical College each year. The relationship with Jefferson Medical College through DIMER is built upon years of a solid working relationship and should be perpetuated.

(c) The General Assembly finds and declares that a new structure of the DIMER Board will more appropriately reflect DIMER's abilities to meet its responsibilities as outlined in this legislation.

(d) The General Assembly finds and declares that placing administration of DIMER within the Delaware Health Care Commission will enhance its ability to accomplish its goals, and ensure that DIMER's future functions will be focused on promoting medical education while helping the State to meet its health care needs.

§9906. Creation of a Board.

(a) There is hereby established the Board of Directors of the Delaware Institute of Medical Education and Research ('Board'), which shall serve as an advisory board to the Health Care Commission.

(b) The Board shall consist of 16 members, 3 of whom shall be appointed by the Medical Center of Delaware; 6 of whom shall be appointed by the Governor, consisting of 1 public member from each county and 1 public member from the City of Wilmington, and 2 members representing medical residency programs in the State, other than those operated by the Medical Center of Delaware; 1 of whom shall be appointed by the Association of Delaware Hospitals to represent hospitals in Kent and Sussex Counties; 1 of whom shall be appointed by the Delaware Higher Education Commission; 3 of whom shall be appointed by the University of Delaware, including representation from the College of Nursing; and 1 of whom shall be appointed by Delaware State University. The Director of the Division of Public Health shall serve as an ex officio member.

(c) All members, other than the ex officio member, shall be appointed for terms of 3 years, except that the present nine members shall serve the remainder of their terms and of the six new appointments, 2 shall be for 3 years, 2 shall be for 2 years and 2 shall be for 1 year, to allow for staggered terms. Any member appointed to fill a vacancy shall be appointed only to fill that vacancy for the remainder of the term, but shall be eligible for re-appointment upon expiration of that term.

(d) No member of the Board shall receive compensation for his or her duties other than normal travel expenses incurred in carrying out his or her responsibilities as members.

(e) A majority of the members of the Board shall constitute a quorum and shall be sufficient for any action by the Board.

(f) The Chair of the Board shall be appointed by the Chair of the Delaware Health Care Commission.

(g) The Board may establish working committees to assist in completing its work, however, it shall maintain a standing 'Committee on Rural Health' to assure that the unique health needs of rural Delaware are addressed in DIMER activities.

#### §9907. Purposes of the Board.

The purpose of the Board shall be to initiate, encourage and promote:

(a) The relationship with Jefferson Medical College of Thomas Jefferson University as Delaware's medical school, including ensuring the admission of 20 bona fide Delaware residents into Jefferson Medical College on an annual basis.

(b) Expansion of opportunities for Delaware residents to obtain training at a reasonable cost in the health and health-related professions when such residents commit to practice their professions in Delaware.

(c) Incentives for qualified personnel in the health and health-related professions to practice in Delaware.

(d) Continued development of a coordinated program of premedical, medical and graduate education among state public institutions of higher learning, Delaware hospitals and Jefferson Medical College.

(e) Support of graduate and post-graduate medical and health care training programs, including emphasis on those programs targeted to meet the State's health care needs.

(f) Programs of education and training in the health fields and research in health and health-related fields, both basic and applied, including the vital areas of public health education, community health planning, and health care costs.

§9908. Duties.

The Board shall be responsible for overseeing implementation of policies designed to accomplish the purposes set forth in §9907 of this subchapter, and shall report to the Commission on its progress. Its activities and responsibilities shall include:

(a) Developing a recruitment program for medical education in conjunction with local colleges and universities to encourage medical school applications from minorities and residents of rural counties and underserved areas of Delaware, in addition to other students interested in pursuing a medical education.

(b) Developing and maintaining statewide communications, publicity and marketing plans in cooperation with the Delaware Higher Education Commission and other interested parties, which will promote awareness of the existence of DIMER and the Jefferson Medical College as Delaware's alternative to a state sponsored medical school.

(c) Close monitoring of the relationship between the University of Delaware Medical Scholars Program and Jefferson Medical College admission slots reserved for Delaware residents.

(d) Developing recruitment programs aimed at attracting premedical students interested in community and rural medicine; provided, however, that the Delaware Health Care Commission shall be empowered to expand or replace this activity with other duties if required by the future health care needs of the State.

(e) Support, as appropriate, private sector provider recruitment efforts by consolidating information collection and dissemination efforts, such as statewide recruitment brochures.

(f) Advising the Delaware Higher Education Commission as it administers and monitors scholarships, loans and loan repayment programs: 1) aimed at attracting graduates and residents in disciplines in which there is a shortage as determined by the Delaware Health Care Commission, and 2) offered to Delaware residents in financial need who wish to pursue a health-related

education and to practice health-related professions in Delaware

The Board may develop working relationships and affiliation agreements with other institutions to facilitate carrying out the purposes of this chapter. Any such agreements shall be approved by the Delaware Health Care Commission, and the State of Delaware shall be a signatory to any documents setting the terms of the agreements "

Approved July 17, 1996

## CHAPTER 517

## FORMERLY

SENATE BILL NO. 304  
AS AMENDED BY SENATE AMENDMENT NOS. 2, 4 AND 5

AN ACT TO AMEND TITLE 14, DELAWARE CODE RELATING TO MANDATORY ATTENDANCE REQUIREMENTS FOR PUBLIC SCHOOL STUDENTS AND MANDATING SCHOOL RESPONSES TO STUDENT NON ATTENDANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 2702 Chapter 27, Title 14, Delaware Code by adding the following subsections (c) and (d) thereto:

“(c) The following provisions shall be applicable in regard to statewide minimum mandatory attendance requirements in each school year for children in grades K through 5.

(1) Following the tenth day of unexcused absence by a student, the school shall immediately notify the parent(s) or guardian and a visiting teacher for the district shall visit the student's home;

(2) Following the 15th day of unexcused absence by a student the students parent(s) or guardian shall be notified by certified mail to appear at the school within ten days of notification for a conference and counseling.

(3) Following the 30th day of unexcused absence by a student, the school shall refer the case for prosecution.

(4) Following the completion of prosecution of the case and the subsequent failure of the student to return to school within five school days thereof, the school shall immediately notify the Department of Services for Children, Youth and Their Families requesting intervention services by the Department. The Department shall contact the family within ten business days.

(d) Each parent or guardian of a student shall sign a contract with the district agreeing they will make every reasonable effort to (1) have their child or children abide by the school code of conduct; (2) make certain their child attends school regularly, and (3) provide written documentation for the reasons for any absence.”

Section 2. Each school district may adopt attendance requirements no less stringent than those established by Section 1 of this Act.

Approved July 17, 1996

CHAPTER 518  
FORMERLY  
SENATE BILL NO. 422

AN ACT TO AMEND CHAPTER 16, TITLE 14 OF THE DELAWARE CODE RELATING TO THE COMPREHENSIVE SCHOOL DISCIPLINE IMPROVEMENT PROGRAM

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1605(7), Title 14 of the Delaware Code by striking subsection (a) in its entirety and by substituting in lieu thereof the following:

"(a) The grant application must certify that the majority of the members of the school level committee are members of the school professional staff, of which a majority shall be instructional staff; that the committee contains representatives of the support staff, student body (for schools enrolling students grades 7 through 12), parents, and the community; that representatives of the employee groups are chosen by members of each respective group and representatives of the non-employee groups are appointed by the local board of education; and that the committee operates on the one-person, one-vote principle for reaching all decisions."

Section 2. Further amend § 1605(7), Title 14 of the Delaware Code by striking subsection (b) (1) and by substituting in lieu thereof the following:

"(1) Establish a school code of conduct which defines the roles and responsibilities of all members of the school community (administrators, teachers, support staff, contracted service personnel, students, families and child/family advocates) and which is consistent with the established state and federal laws, state and federal regulations, local board policies, local district codes of conduct, and local district budgetary guidelines, unless relevant waivers have been granted"

Section 3. Further amend § 1605(7), Title 14 of the Delaware Code by striking section (b)(2) in its entirety and by renumbering the other subsections accordingly.

Approved July 17, 1996

CHAPTER 519  
FORMERLY

HOUSE BILL NO. 651  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND § 4112 OF TITLE 14 OF THE DELAWARE CODE RELATING TO STUDENT CRIMINAL VIOLATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4112 (b) of Title 14 of the Delaware Code by adding the following sentence immediately following the third sentence in said subsection:

If a pupil is the victim of any criminal conduct described in this subsection on school property, the principal shall as soon as possible report such incident to a parent or legal guardian of the victim pupil. The school shall document all attempts to contact the parent or legal guardian."

Section 2. Amend § 4112(c) of Title 14 of the Delaware Code by inserting the words "and to a parent or legal guardian of the pupil" between the word "superintendent" and the period (") at the end of the first sentence of said subsection

Approved July 17, 1996

## CHAPTER 520

## FORMERLY

HOUSE BILL NO. 626  
AS AMENDED BY HOUSE AMENDMENT NO. 1AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO HIV  
TESTING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Chapter 12, Title 16 of the Delaware Code by changing the number of  
the current Section 1204 to 1205 and adding a new Section 1204 to read as follows:

"§ 1204. Counseling of all pregnant women.

As a routine component of prenatal care, every licensed health care provider who  
renders the primary prenatal care, regardless of the site of such practice, shall advise  
every pregnant woman who is his or her patient of the value of testing for Human  
Immunodeficiency Virus (HIV) infection and shall request of each such pregnant woman  
informed consent to such testing. Practitioners shall also counsel all pregnant women  
who are found to be HIV positive about the dangers to her fetus and the advisability of  
receiving treatment in accordance with the then current Centers for Disease Control and  
Prevention recommendations for HIV positive pregnant women. Any pregnant woman  
shall have the right to refuse consent to testing HIV infection and any recommended  
treatment. Documentation of such refusal shall be maintained in the patient's medical  
record. All the other provisions of this chapter shall apply to such counseling, testing  
and disclosure which takes places pursuant to this Section."

Approved July 17, 1996

## CHAPTER 521

## FORMERLY

SENATE BILL NO. 467  
AS AMENDED BY SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO A  
PROFESSIONAL LIBRARIAN AND ARCHIVIST INCENTIVE PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Title 14, Delaware Code by adding thereto a new Chapter 89C to read as follows:

"Chapter 89C Professional Librarian and Archivist Incentive Program

§8901C Purpose.

It is the intent and purpose of the General Assembly through this chapter to enable and encourage academically talented Delawareans to pursue careers as librarians and archivists in the public libraries, public school libraries, state agencies and political subdivisions of Delaware.

§8902C Administration.

(a) This chapter shall be administered by the Delaware Higher Education Commission, hereinafter referred to as the 'Commission'

(b) This Commission shall adopt rules and regulations as it deems necessary and proper to the administration of this subchapter.

(c) The Commission shall annually report to the General Assembly the number of recipients, the institutions attended by the recipients, and the total amount of expenditures made under this subchapter

§8903C Scholarship Loans

(a) The Commission is hereby authorized to award educational scholarship loans subject to the limits of its appropriations for this purpose.

(b) For the purposes of this section, a scholarship loan, referred to hereinafter as 'award', is a loan, the repayment of which is forgiven when the borrower is employed as a librarian or archivist in the public libraries, public school districts, state agencies, or political subdivisions of the State of Delaware for a period of time in accordance with the conditions specified in section 8905C of this title

(c) Awards shall be provided for graduate education in library and information studies at any institution of higher education offering a Master's Degree program accredited by the American Library Association

(d) No student shall be eligible for such award who is not a resident of the State for at least one year prior to the approval of the award. The place of residence of a student who is either under 18 years of age or dependent on parental financial support shall be the legal residence of his parent or guardian who must have qualified as a registered voter in Delaware and who is subject to payment of Delaware income tax. A student over 18 years of age, who is not dependent on parental financial support must meet the federal government's financial self-supporting student definition, and must have qualified as a registered voter in Delaware and must be subject to payment of Delaware income tax, to satisfy the requirement of this section. An independent student may not satisfy the requirement for legal residence in Delaware while his her principal occupation is that of student

(e) Awards shall be made to college graduates who have received a baccalaureate degree and who are accepted and enrolled as full-time or part-time students in an American Library Association accredited graduate program of library and information science.

(1) The number of awards will be determined annually by the Commission.

(f) Awards shall be based on criteria established by the Commission. Preference shall be given to persons currently employed by a Delaware public library, county department of libraries, public school library, or state agency library or archive. Selection criteria may include consideration of community service, academic achievement, and financial need.

(g) The amount of each award will be determined annually by the Commission, except that the award shall not exceed the cost of tuition, books, fees, and other direct educational expenses. Full-time and part-time students are eligible for awards covering full reimbursement of qualified educational expenses.

(h) Awards shall be renewable within the limits of appropriations for the program, provided the student meets the academic progress standards which shall be set by the Commission and communicated in writing to the recipient at the time the initial award is granted. No student shall receive more than two year's support from this program, or the equivalent on a prorated basis for qualifying part-time students.

#### §8904C Disbursement.

Funds awarded from this program shall be disbursed on a quarter or semester basis. Payment will be made directly to the institution, not to the student. The Commission may grant exceptions to these payment procedures when, in the opinion of the Commission, adherence would cause unwarranted inconvenience for the recipient and/or the Commission, or when the approved direct educational expense is not payable to the institution.

#### §8905C Payment and Forgiveness.

(a) Repayment or forgiveness will commence six months after the student completes the master's degree program or immediately after the student discontinues enrollment prior to completion. If a student discontinues enrollment prior to completion of the master's degree program, the full amount of the award must be repaid, regardless of whether the student is employed as a librarian or archivist in a Delaware public library, public school district, or state agency or political subdivision. Should a student have a compelling reason to temporarily interrupt coursework, a deferment may be approved by the Commission for a student requesting a leave of absence of up to six months. The student should provide satisfactory justification for delaying completing of degree coursework. Any request for deferment must be made in writing, and only one deferment will be granted.

(b) (1) If after six months following graduation, the recipient is employed as a librarian or archivist by a Delaware public library, public school district, or state agency or political subdivision, no repayment of award principal or interest will be required. For each year the recipient is so employed, the repayment of one quarter of the award will be forgiven.

(b) (2) If during the period of repayment the recipient terminates employment as a librarian or archivist in a Delaware public library, public school district, state agency or political subdivision, the recipient will be required to commence repayment of the awards or portions thereof which have not been forgiven at the time of the employment termination.

(b) (3) If after six months following graduation the recipient is not employed as a librarian or archivist in a Delaware public library, public school library, state agency or political subdivision, the recipient shall be obligated to make monthly payments to the Commission until the full amount of the award and interest on the award from the date of origination is paid in full. A borrower who is unable to obtain a position as a librarian or archivist in a Delaware public library, public school district, or state agency or political subdivision may apply for a single one-year deferment from the normal repayment provisions by providing to the satisfaction of the

Commission documentation of his or her unsuccessful efforts to obtain qualified employment. Any request for deferment must be made in writing and only one deferment will be granted.

(b)(4) If during the period of repayment the recipient becomes employed as a librarian or archivist in a Delaware public library, public school library, state agency or political subdivision, payments will be deferred and one quarter of the award amount will be forgiven for each year the recipient is so employed. Under no circumstances will payments already made by the recipient be reimbursed as a result of subsequent employment.

(b) (5) The Commission shall determine the amounts of monthly payments, the length of the repayment period, and the rate and type of interest to accrue on awards.

(b) (6) The Commission shall communicate the terms of repayment and interest accrual to the recipient and secure a promissory note from the recipient attesting to the recipient's agreement to such terms as shall be established."

Approved July 18, 1996

## CHAPTER 522

## FORMERLY

HOUSE BILL NO. 506  
AS AMENDED BY SENATE AMENDMENT NO. 2

AN ACT TO AMEND CHAPTER 91 AND CHAPTER 92 OF TITLE 29 OF THE DELAWARE CODE RELATING TO STATE PLANNING AND LAND USE PLANNING COORDINATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 9101(c), Title 29, Delaware Code by adding a new subsection "(4)" to read as follows:

"(4) Recommendations on land use planning actions that are subject to review and comment pursuant to chapter 92 of this title."

Section 2. Amend § 9101, Title 29, Delaware Code by adding a new subsection "(h)" to read as follows:

"(h) There is hereby established the Office of State Planning Coordination within the Office of the Budget. The administrator and head of the Office of State Planning Coordination shall be the State Planning Coordinator who shall be qualified by training or experience to perform the duties of the office. The Office of State Planning Coordination shall assist in statewide planning matters, and it shall function as an advisory, consultative and coordinating office.

(1) The Office of State Planning Coordination shall provide staffing assistance to the Cabinet Committee on State Planning Issues.

(2) The State Planning Coordinator shall serve as the secretary to the Cabinet Committee on State Planning Issues.

(3) The Office of State Planning Coordination shall collect and coordinate the comments of state agencies regarding land use planning actions pursuant to chapter 92 of this title. In carrying out this function, the Office of State Planning Coordination shall, to the maximum extent possible, reconcile differing opinions and conclusions among agency comments with the objective of providing consistent, timely and useful information to the local government. The Office of State Planning Coordination shall be authorized to represent and speak for the State on land use matters subject to chapter 92 of this title."

Section 3. Amend § 9202(4), Title 29, Delaware Code by striking the sentence "Critical areas, however, do not include agricultural lands in productive use."

Section 4. Amend § 9202 (10), Title 29, Delaware Code by striking it in its entirety and renumbering § 9202 (11) to be § 9202 (10).

Section 5. Amend Subchapter II, Chapter 92, Title 29, Delaware Code by striking therefrom the phrase "Department of Natural Resources and Environmental Control" wherever it appears therein and inserting in lieu thereof the phrase "Office of State Planning Coordination"

Section 6. Amend § 9211, Title 29, Delaware Code by inserting after "A critical area" in § 9211(3) the phrase "as identified in an adopted state or local plan and as officially depicted on maps prepared pursuant to such a plan as guides for land use and public policy investment decisions;" and by adding a new § 9211(5) to read "(5) Extension of a municipal boundary through annexation pursuant to § 101 and § 101A, Title 22, Delaware Code."

Section 7. Amend § 9212, Title 29, Delaware Code by striking the existing §9212 in its entirety.

Section 8. Amend § 9213, Title 29, Delaware Code by striking it in its entirety and inserting in lieu thereof the following:

“§ 9213. Existing County and Municipal Comprehensive Development Plans.

(a) Notwithstanding any provisions of this chapter or other laws, municipalities shall review their respective existing comprehensive development plans for the purpose of determining whether such plans arbitrarily exclude land uses of more than local benefit. The local interest in excluding uses of more than local benefit shall be one factor which may be considered in the determination of whether such use exclusion is arbitrary.

(b) If any municipal jurisdiction determines its existing comprehensive development plan arbitrarily excludes a use of more than local benefit, it shall amend such plan, within three months of such determination, to remedy the arbitrary exclusion.

(c) If the Cabinet Committee on State Planning Issues determines that an existing municipal comprehensive development plan arbitrarily excludes a land use of more than local benefit, the Office of State Planning Coordination shall, within thirty days notify the appropriate municipal jurisdiction of such determination and the reasons therefor.

(d) The municipal jurisdiction shall, within three months thereafter, determine if it agrees with any determination made pursuant to subsection (c) of this section. If the municipal jurisdiction agrees, it shall amend the comprehensive development plan in accordance with subsection (b) of this section. If the municipality disagrees, the decision to retain the plan shall be a land use planning decision and shall be subject to the provisions for review and referral set forth in this chapter.

(e) County jurisdictions shall provide for consideration of land uses of more than local benefit and ensure that such uses are not arbitrarily excluded as part of their responsibilities for adoption of a comprehensive plan for the county as set forth in chapter 26, chapter 46, and chapter 69 respectively of title 9.

Section 9. Amend § 9216(d)(2), Title 29, Delaware Code by striking it therefrom in its entirety and renumbering the remaining subsections.

Section 10. Amend § 9216(d), Title 29, Delaware Code by inserting new subsections (7) and (8) to read as follows:

“(7) The State Development Goals and land development policy recommendations adopted by the Cabinet Committee on State Planning Issues, as periodically amended;

(8) The long range land use or resource management plans and policies developed by the State and its respective agencies pursuant to the Quality of Life Act as amended, chapter 26, chapter 46, chapter 69 of title 9.”

Section 11. Amend § 9218, Title 29, Delaware Code by striking the section in its entirety and inserting in lieu thereof the following:

“§9218. Office of State Planning Coordination’s responsibility to local jurisdictions.

“Consistent with § 9101 (h)(3) Title 29, Delaware Code, the Office of State Planning Coordination shall transmit the coordinated comments of state agencies, including its own, if any, to the local jurisdiction within 20 working days of receipt of notice pursuant to § 9214 of this title; provided, however that the local jurisdiction may grant reasonable extensions to the comment period.”

Section 12. Amend § 9225, Title 29, Delaware Code by striking the existing § 9225 in its entirety and substituting in lieu thereof the following:

“§9225. State land use planning actions subject to process.

State land use planning actions subject to this subchapter are ones of local concern which include, but are not limited to:

- (1) Adoption or amendment of State Development Goals and land development policy recommendations by the Cabinet Committee on State Planning Issues;
- (2) Adoption or amendments of State agency long range land use or resources management plans and policies pursuant to the Quality of Life Act, as amended, chapter 26, chapter 46, chapter 69 of title 9;
- (3) The submission of state agency requested capital improvement budgets and programs to the Budget Director pursuant to chapter 63, title 29;
- (4) The transportation capital improvements budget prepared pursuant to chapter 84, title 29;
- (5) Actions relating to planning or construction of major state facilities;
- (6) Any land use planning action involving a critical area as defined herein."

Section 13. Amend § 9226, Title 29, Delaware Code by retitling the section "Existing State Plans.", by striking from (a) thereof the phrase "comprehensive development plan", and by striking from (c) thereof the phrase "within 6 months from July 12, 1978" and inserting in lieu thereof the phrase "immediately inform the Office of State Planning Coordination and".

Section 14. Amend § 9227, Title 29, Delaware Code by replacing the first word of the section, "Any" with the word "any" and inserting immediately before such word the phrase "Except for state agency requests for capital improvement budgets and programs and the transportation capital improvement budget and program" and by inserting the phrase "and to the Office of State Planning Coordination" between the word "jurisdiction" and the period "." in the last sentence thereof.

Section 15. Amend § 9228(b), Title 29 of the Delaware Code by inserting new subsections (8) and (9) to read as follows:

"(8) The State Development Goals and land development policy recommendations adopted by the Cabinet Committee on State Planning Issues, as periodically amended;

(9) The long range land use or resources management plans and policies developed by the State and its respective agencies pursuant to the Quality of Life Act as amended, chapter 26, chapter 46, chapter 69 of title 9."

Section 16. Amend § 9230(b), Title 29, Delaware Code by inserting at the beginning of the subsection the phrase "Except for state agency requests for capital improvement budgets and programs and the transportation capital improvement budget and program," and by replacing the word "Where" with the word "where".

Section 17. Amend Chapter 92, Title 29 of the Delaware Code by deleting Subchapter III in its entirety.

Section 18. Amend Chapter 92, Title 29 of the Delaware Code by deleting § 9221, § 9222, § 9232, and § 9233 in their entirety and inserting in lieu thereof a new section, §9236:

"§9236. Responsibilities of the Advisory Panel on Intergovernmental Planning and Coordination.

The Advisory Panel on Intergovernmental Planning and Coordination shall assist in resolution of disagreements between the state and any local government upon request of either jurisdiction. The Advisory Panel shall serve as an impartial mediator in any such proceedings pursuant to procedures established by the Cabinet Committee, which procedures shall enable each jurisdiction a fair opportunity to present its position to the Advisory Panel. The Advisory Panel's findings and recommendations shall not be binding on either jurisdiction."

Approved July 18, 1996

## CHAPTER 523

## FORMERLY

SENATE BILL NO. 411  
AS AMENDED BY SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 17 OF THE DELAWARE CODE RELATING TO CORRIDOR  
CAPACITY PRESERVATION

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Section 145 of Title 17, of the Delaware Code by striking said Section in its entirety, and substituting in lieu thereof a new Section to read as follows:

"§145. Corridor Capacity Preservation.

(a) Application. This section is applicable only to transportation routes categorized as corridor capacity preservation projects as described herein.

(b) Definitions. As used in this section:

(1) 'Comprehensive Development Plan' means a comprehensive land use plan, master plan or comprehensive plan as provided in Title 9, 22, or 29, Delaware Code.

(2) 'Corridor' means a particular route of one or more highways of this State, serving predominantly statewide and/or regional travel at a high level of service at the time of the analysis conducted under subsection (d) of this section.

(3) 'Corridor capacity' means the ability of a corridor to sustain its level of service for a period of at least ten (10) years and for up to twenty (20) years.

(4) 'Department' means the Department of Transportation.

(5) 'Preservation' means to maintain corridor capacity.

(c) Findings.

(1) Pursuant to federal and state law, the Department is required to develop long-range plans and principles to consider the various appropriate means of meeting the transportation needs of the State. This work is coordinated with the planning efforts of metropolitan planning organizations pursuant to 23 U.S.C. Section 134 et seq. As part of these long-range plans and principles, the Department may identify transportation routes requiring corridor capacity preservation in order to: (i) focus development toward existing locations; (ii) reduce the need for expansion of the transportation system; and (iii) otherwise advance the quality of life of Delawareans and the development policies adopted by the Cabinet Committee on State Planning Issues.

(2) Pursuant to the Quality of Life Act of 1988, Chs. 26, 49, and 69 of Title 9, Delaware Code, as well as the Land Use Planning Act, Ch. 92 of Title 29, Delaware Code, each county of this State is required to adopt a comprehensive development plan to guide and control future development. Each plan, which is to have the force and effect of law, includes among its purposes the facilitation of the adequate and efficient provision of transportation. These plans are reviewed by the Cabinet Committee on State Planning Issues to determine their compliance with the State's development policies, including the Department's long-range plans and principles. The State is under no obligation to provide infrastructure improvements to support land use or development actions where a county's

comprehensive plans are inconsistent with the State's policies. In addition, pursuant to Chapter 3 of Title 22, Delaware Code, municipalities are also required to develop comprehensive development plans, with relief of congestion constituting one of the goals of such plans. As part of this coordinated process, therefore, the comprehensive development plans adopted by the counties and municipalities should incorporate the Department's designation of transportation routes requiring corridor capacity preservation.

(3) This legislation is intended to facilitate the acquisition of property interests sufficient to provide corridor capacity preservation in keeping with these comprehensive development plans and the Department's long-range plans.

(d) Implementation. On or before October 1, 1996, and every three years thereafter, pursuant to the provisions of 23 U.S.C. Section 134 et seq., the Department's long-range plans shall propose transportation routes requiring corridor capacity preservation, if any. The determination of these routes shall be based upon the following criteria: level of service analysis; input and comment from the counties and municipalities to the need within growth areas; development trends; traffic growth; additional threats to roadway integrity; safety; support for long range planning goals of the Department and the relevant metropolitan planning organization(s); deliverability; economic impacts; social/environmental impacts; and air quality. The location of these routes shall be submitted to the local government bodies of the counties and municipalities for review and then presented to the public at a public hearing. The local governing bodies shall have ninety (90) days to review the locations and respond to the Department. The Department shall, after considering public comments and the responses of the local governing bodies of the municipalities and counties, determine those routes requiring corridor capacity preservation. Each county and municipality shall incorporate these determinations into their comprehensive development plans or amendments thereto. Any subsequent Departmental corridor capacity preservation projects shall be subject to the same approval process as other capital projects. When approved by the Council on Transportation and adopted by the General Assembly, the Department may then proceed to pursue these projects as set forth each year in the Department's Capital Improvement Program. Property interests acquired for these projects under this section shall be in fee simple absolute or such lesser interest as the Department may deem appropriate. Acquisition of such property interests may be obtained by gift, devise, purchase, or in the exercise of the power of eminent domain, by condemnation in the manner prescribed in Chapter 61 of Title 10, Delaware Code, subject to the provisions of Chapter 95 of Title 29, Delaware Code.

(e) Effect on other powers. The powers conveyed to the Department by this section are in addition to and not in derogation of any other powers it may have related to corridor capacity preservation, including but not limited to the power to seek voluntary compliance with its policies, to regulate subdivision streets intended for state maintenance, and the power to regulate access to and from state-maintained highways."

Approved July 18, 1996

CHAPTER 524

FORMERLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 78

AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTERS 55 AND 56, TITLE 29, DELAWARE CODE RELATING TO COMPUTATIONS OF JUDICIAL AND STATE EMPLOYEE PENSIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §5527(a), Chapter 55, Title 29, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection to read as follows:

"(a) The amount of the monthly service or disability pension payable to an employee or former employee shall be 1/60 of his or her final average compensation multiplied by the number of years, taken to the nearest twelfth of a year, in his or her period of credited service. The amount payable to a participant who does not make the additional contribution provided in subsection (e) of §5501 of this title for years of credited service before 1977 shall be 1/60 of his or her final average compensation multiplied by the number of years, taken to the nearest twelfth of a year, in his or her period of credited service after 1976, plus 1/60 of his or her prior final average compensation multiplied by the number of years, taken to the nearest twelfth of a year, in his or her period of credited service before 1977, provided that the maximum amount based on the service before 1977 is \$1,000."

Section 2. Amend §5527(b), Chapter 55, Title 29, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection to read as follows:

"(b) In the case of an employee or former employee whose credited service under §5501(b)(1), (2), and (3) of this title includes service before June 1970, the minimum amount payable shall be:

(1) If he or she has 15 years of such credited service, the lesser of \$150 or his or her final average compensation; or

(2) If he or she does not have 15 years of such credited service, the minimum amount payable under subsection (c) of this section, subject to the limitation specified in subsection (c) of this section."

Section 3. Amend §5527(c), Chapter 55, Title 29, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection to read as follows:

"(c) In the case of an employee or former employee whose credited service under §5501(b)(1), (2), and (3) of this title does not include service before June 1970, but does include service prior to July 1, 1976, the minimum amount payable shall be \$5 multiplied by the number of years, taken to the nearest twelfth of a year, in his or her period of credited service, but not more than 30 such years."

Section 4. Amend §5528(a)(1), Chapter 55, Title 29, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection to read as follows:

"(a)(1) Upon the death of an employee who has 5 years of credited service, exclusive of service credited under §5501(b)(4), (5), and (12) of this title, a monthly survivor's pension shall be payable to his or her eligible survivor or survivors equal to 3/4 of the service pension the employee would have been eligible to receive had he or she elected the option provided under §5527(g) of this title."

Section 5. Amend §5528(b)(1), Chapter 55, Title 29, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection to read as follows:

"(b)(1) Upon the death of an individual receiving a service or disability pension at the time of his or her death, a monthly survivor's pension shall be payable to his or her eligible survivor or survivors equal to the greater of (i) 50% of such service or disability pension, or (ii) if such pension was computed under the provisions of §5527(g) of this title, 75% of such service or disability pension."

Section 6. Amend §5543(a), Chapter 55, Title 29, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection to read as follows:

"(a) Effective January 1, 1997, employee contributions to the Fund shall be either 3% of total monthly compensation in excess of \$500; or, if any employee receives annual compensation in fewer than 12 months, 3% of total monthly compensation which exceeds the amount determined by multiplying the ratio of 12 over the number of months which he or she receives annual compensation times \$500. In no event shall total compensation during any calendar year in excess of \$6,000 be exempt from contributions."

Section 7. Amend §5522(b), Chapter 55, Title 29, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection to read as follows:

"(b) A former employee with a vested right to a service pension shall become eligible to receive such pension, computed in accordance with this chapter beginning with the first month after his or her attainment of (1) age 60 if credited service is equal to or greater than 20 years and includes service prior to July 1, 1976 or (2) age 62 if credited service is equal to or greater than 5 years."

Section 8. Amend §5523(a), Chapter 55, Title 29, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection to read as follows:

"(a) An employee who has 5 years of credited service exclusive of service under §5501(b)(4), (5), and (12) of this title shall have a vested right to a pension.

Section 9. Amend §5524(a), Chapter 55, Title 29, Delaware Code, by deleting the phrase "provided that such pension shall not be calculated under §5527(a)(1)(i) of this title, unless a pension would have been payable under this chapter in effect immediately prior to the effective date of the 1976 Pension Act."

Section 10. Amend §5522(a)(1), Chapter 55, Title 29, Delaware Code, by striking the number "65" wherever it appears therein and substituting in lieu thereof the number "62".

Section 11. Amend §5613(1), Chapter 56, Title 29, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection to read as follows:

"(1) The amount of the annual pension or disability pension payable to a member under the revised plan shall be the sum of 1/24 of final average compensation multiplied by years of service as a judge up to 12 years inclusive, plus 1/48 of final average compensation multiplied by years of service as a judge from 13 to 24 years inclusive. Disability pensions will be computed on the basis of actual service as a judge or 12 years of service as a judge, whichever is greater."

Section 12. Amend §5614(a), Chapter 56, Title 29, Delaware Code, by deleting the phrase "if he or she had been 62 years of age".

Section 14. The effective date of this Act shall be July 1, 1996, providing that sufficient funds therefore are appropriated by the General Assembly.

Approved July 18, 1996

## CHAPTER 525

## FORMERLY

## SENATE BILL NO. 404

AN ACT TO AMEND CHAPTER 83, TITLE 11, AND CHAPTERS 55 AND 56, TITLE 29, DELAWARE CODE, TO PROVIDE POST-RETIREMENT INCREASES TO PENSIONERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §5532, Chapter 55, Title 29, Delaware Code, by adding thereto a new subsection to be designated as subsection (e) to read as follows:

"5532(c). Any monthly service or disability pension which became effective on or before July 1, 1995 and is payable on the date this subsection is enacted into law and any survivor pension based on a former service or disability pension that was effective on or before July 1, 1995 and is payable on the date this subsection is enacted into law shall be increased effective July 1, 1996, by 2% plus 1% for pensions that were effective prior to January 1, 1980. These increases shall continue to be paid through June 30, 1997 and every Fiscal year thereafter provided that funds are appropriated in accordance with §5544 of this Chapter."

Section 2. The increases provided by this Act shall not apply to pensions awarded under §5527(d), Chapter 55, Title 29, Delaware Code.

Section 3. Amend §5532, Chapter 55, Title 29, Delaware Code, by adding thereto a new subsection to be designated as subsection (d) to read as follows:

"5532(d) Any monthly service or disability pension which became effective on or after July 1, 1976 and is payable on the date this subsection is enacted into law and any survivor pension based on a former service or disability pension which became effective on or after July 1, 1976 and is payable on the date this subsection is enacted into law shall also be increased effective July 1, 1996 by the amount of difference between the pensioner's computed benefit under §5527(a) of this title as effective July 1, 1996 less the benefit previously awarded under §5527(a)(1) and (2) of this title."

Section 4. Amend §5544, Chapter 55, Title 29, Delaware Code, by adding thereto a new subsection to be designated as subsection (f) to read as follows:

"(f)(1) the State's obligation to the State Employees' Pension Trust Fund, the State Judiciary Retirement Fund, and the State Police Retirement Fund to implement the provisions of §5532(c) and §5532(d) of this Chapter shall be the payment required to amortize the unfunded accrued liability over five years from July 1, 1996.

(2) The State's obligation to the Special Pension Fund authorized by Volume 61, Chapter 455, Laws of Delaware, to implement the provisions of §5532(c) of this Chapter in Fiscal year 1997 shall be the lump sum actuarial liability of the benefits granted."

These increases shall continue to be paid through June 30, 1997 and every Fiscal year thereafter provided that funds are appropriated in accordance with §5544 of this Chapter."

Approved July 18, 1996

CHAPTER 526

FORMERLY

HOUSE BILL NO. 400

AN ACT TO AMEND SUBCHAPTER V, CHAPTER 19, TITLE 10, DELAWARE CODE, RELATING TO JUDICIAL RECORDS AND INDICES, NEW CASTLE COUNTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1976, § 1977, and § 1979, Subchapter V, Chapter 19, Title 10, Delaware Code, by striking said sections in their entirety.

Section 2. The provisions of this Act shall become effective on July 1, 1996.

Approved July 18, 1996

CHAPTER 527

FORMERLY

HOUSE BILL NO. 423

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO EXEMPTIONS FROM THE STATE CLASSIFIED SERVICE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Amend Section 8516, Title 29 of the Delaware Code by deleting said section in its entirety and substituting in lieu thereof the following:

“§8516. Exemptions.

The following positions set forth in this chapter shall be exempt from Chapter 59 of this title:

- (1) Secretary of Labor;
- (2) Director of Employment and Training;
- (3) Director of Industrial Affairs;
- (4) Director of Unemployment Insurance;
- (5) Director of Vocational Rehabilitation;
- (6) Chief of the Office of Occupational and Labor Market Information;
- (7) Executive Director of the Workforce Development Council.”

Approved July 18, 1996

## CHAPTER 528

## FORMERLY

## HOUSE BILL NO. 455

AN ACT TO AMEND CHAPTER 28, TITLE 21 OF THE DELAWARE CODE RELATING TO HABITUAL MOTOR VEHICLE OFFENDERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2810, Title 21 of the Delaware Code, by striking the period at the end of the catchline at the beginning of the section, and inserting in its place new text, to read:

“; Jurisdiction.”

Section 2. Amend § 2810, Title 21 of the Delaware Code, by designating the first paragraph thereof as subsection (a), and by adding a new subsection, to read:

“(b) Notwithstanding any other provision of law to the contrary, any offense, other than a felony, which is within the exclusive or original jurisdiction of another court and which may be joined properly with violations created by this Section, shall be deemed to be within the original jurisdiction of the Court of Common Pleas.”

Approved July 18, 1996

## CHAPTER 529

## FORMERLY

## HOUSE BILL NO. 582

## AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND SECTION 107 OF TITLE 14 RELATING TO THE QUALIFICATIONS FOR THE STATE SUPERINTENDENT OF SCHOOLS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 107 of Title 14 of the Delaware Code by deleting the period “.” at the end of existing subsection (b) of § 107 and adding the following phrase:

“, including but not limited to the requirement that the State Superintendent be a bona fide resident of the State of Delaware within six months after his or her appointment, provided, however, that upon good cause shown, the State Board of Education may grant an additional extension of six months.”

Approved July 18, 1996

CHAPTER 530

FORMERLY

HOUSE BILL NO. 325  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 7, TITLE 18 OF THE DELAWARE CODE TO CHANGE THE DATES ON WHICH QUARTERLY TAX PAYMENTS ARE DUE AND HOW UNDERPAYMENTS ARE DETERMINED.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 702(d), Chapter 7, Title 18 of the Delaware Code by deleting said subsection in its entirety and substituting the following in lieu thereof:

"(d) The taxes imposed under this Section and § 703, § 704, § 707, § 1917 and § 6914 of this title shall be payable as follows:

Twenty-five percent of the estimated tax liability for the current year shall be paid on each April 15, June 15, September 15, and December 15 of the current taxable year and the remaining balance to be paid on March 1 of the following year.' "

Section 2. Amend § 702(f), Chapter 7, Title 18 of the Delaware Code by deleting said subsection in its entirety and substituting the following in lieu thereof:

"(f) In case of any underpayment of estimated tax required by this Section, there shall be added to the tax for the taxable year an amount determined at the rate of 1-1/2% per month, or fraction thereof, upon the amount of the underpayment for the period of the underpayment. The period of the underpayment shall run from the date the estimated tax or installment was required to be paid to the date on which actually paid. No penalty for underpayment shall be imposed if the quarterly estimated tax payments equal one hundred percent (100%) of the total tax due and paid for the previous tax year."

Section 3. This Act shall become effective June 30, 1996.

Approved July 18, 1996

## CHAPTER 531

## FORMERLY

## SENATE BILL NO. 288

## AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO PARENTING EDUCATION COURSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

AMEND §1507 of Title 13 of the Delaware Code by adding a new subsection "(h)" to read as follows:

"(h) In any case where there are living children of the marriage up to the age of 17, the Court shall order that the parties pay for and participate in a 'Parenting Education Course' unless the Court, upon motion, determines that participation in the course is deemed not necessary. The 'Parenting Education Course' shall be a course which is certified by the Department of Services for Children, Youth and Their Families to meet the goal of educating divorce litigants on the impact on children of the restructuring of families. The course, in order to be certified by the Department of Services for Children, Youth and Their Families, shall consist of at least four (4) hours of instruction and at a minimum provide instruction regarding the following items:

- (1) information on the developmental stages of children;
- (2) adjustment of children to parental separation;
- (3) dispute resolution and conflict management;
- (4) guidelines for visitation;
- (5) stress reduction in children; and
- (6) cooperative parenting.

A litigant who has a demonstrable history of domestic violence shall be ordered to participate in a separate and more intensive course which shall include, at a minimum, the topics required in subsections 1 through 6 and education regarding domestic violence, its prevention and its effect upon children.

Parties do not have to attend the same course."

Approved July 18, 1996

CHAPTER 532

FORMERLY

SENATE BILL NO. 289  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 23, TITLE 19 OF THE DELAWARE CODE RELATING TO WORKERS' COMPENSATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2321 of Chapter 23, Title 19 of the Delaware Code by inserting the words "Permanent injury relating to hearing or vision loss," at the beginning of the paragraph.

Approved July 18, 1996

CHAPTER 533

FORMERLY

SENATE BILL NO. 391

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO FRATERNAL BENEFIT SOCIETIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 18 of the Delaware Code by adding thereto a new chapter, designated as Chapter 62, which new chapter shall read as follows:

"Chapter 62. Fraternal Benefit Societies

Subchapter I. Structure and Purpose

Sec.

- 6201. Fraternal benefit societies.
- 6202. Lodge system.
- 6203. Representative form of government.
- 6204. Terms used.
- 6205. Purposes and powers.

Subchapter II. Membership

- 6206. Qualifications for membership.
- 6207. Location of office, meetings, communications to members, grievance procedures.
- 6208. No personal liability.
- 6209. Waiver.

## Subchapter III. Governance

- 6210. Organization.
- 6211. Amendments to laws.
- 6212. Institutions.
- 6213. Reinsurance.
- 6214. Consolidations and mergers.
- 6215. Conversion of fraternal benefit society into mutual life insurance company.

## Subchapter IV. Contractual Benefits

- 6216. Benefits.
- 6217. Beneficiaries.
- 6218. Benefits Not attachable.
- 6219. The Benefit contract.
- 6220. Nonforfeiture benefits, cash surrender values, certificate loans and other options.

## Subchapter V. Financial

- 6221. Investments.
- 6222. Funds.
- 6223. Exemptions.
- 6224. Taxation.

## Subchapter VI. Regulation

- 6225. Valuation.
- 6226. Reports.
- 6227. Annual license.
- 6228. Examination of societies; no adverse publications.
- 6229. Foreign or alien society - admission.
- 6230. Injunction - liquidation - receivership of domestic society.
- 6231. Suspension, revocation or refusal of license of foreign or alien society
- 6232. Injunction.
- 6233. Licensing of agents.
- 6234. Unfair methods of competition and unfair and deceptive acts and practices.

## Subchapter VII. Miscellaneous

- 6235. Service of process.
- 6236. Penalties.
- 6237. Exemption of certain societies.

6238. Review.

Subchapter I. Structure and Purpose

§ 6201. Fraternal benefit societies.

Any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of §6237(a)(2) of this title whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.

§ 6202. Lodge system.

(a) A society is operating on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated or admitted in accordance with its laws, rules and ritual. Subordinate lodges shall be required by the laws of the society to hold regular meetings at least once in each month in furtherance of the purposes of the society.

(b) A society may, at its option, organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice or vote in the management of the society.

§ 6203. Representative form of government.

A society has a representative form of government when:

(1) it has a supreme governing body constituted in one of the following ways:

(a) Assembly. The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates shall constitute a majority in number and shall not have less than two-thirds of the votes and not less than the number of votes required to amend the society's laws. The assembly shall be elected and shall meet at least once every four years and shall elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws.

(b) Direct Election. The supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term of a board member may not exceed four years. Vacancies on the board between elections may be filled in the manner prescribed by the society's laws. Those persons elected to the board shall constitute a majority in number and not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member shall be considered to be an elected member. The board shall meet at least quarterly to conduct the business of the society.

(2) the officers of the society are elected either by the supreme governing body or by the board of directors;

(3) only benefit members are eligible for election to the supreme governing body and the board of directors; and

(4) each voting member shall have one vote; no vote may be cast by proxy.

§ 6204. Terms used.

Whenever used in this chapter:

- (1) 'Benefit contract' shall mean the agreement for provision of benefits authorized by §6216 of this title, as that agreement is described in §6219(a) of this title.
- (2) 'Benefit member' shall mean an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.
- (3) 'Certificate' shall mean the document issued as written evidence of the benefit contract.
- (4) 'Commissioner' shall mean the Commissioner of Insurance of this State.
- (5) 'Laws' shall mean the society's certificate of incorporation, constitution and bylaws, however designated.
- (6) 'Lodge' shall mean subordinate member units of the society, known as camps, courts, councils, branches or by any other designation.
- (7) 'Premiums' shall mean premiums, rates, dues or other required contributions by whatever name known, which are payable under the certificate.
- (8) 'Rules' shall mean all rules, regulations or resolutions adopted by the supreme governing body or board of directors which are intended to have general application to the members of the society.
- (9) 'Society' shall mean fraternal benefit society, unless otherwise indicated.

§ 6205. Purposes and powers.

- (a) A society shall operate for the benefit of members and their beneficiaries by:

(1) providing benefits as specified in §6216 of this title; and

(2) operating for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic or religious purposes for the benefit of its members which may also be extended to others.

Such purposes may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.

(b) Every society shall have the power to adopt laws and rules for the government of the society, the admission of its members, and the management of its affairs. It shall have the power to change, alter, add to or amend such laws and rules and shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

Subchapter II. Membership

§ 6206. Qualifications for membership.

- (a) A society shall specify in its laws or rules:

(1) eligibility standards for each and every class of membership, provided that if benefits are provided on the lives of children, the minimum age for adult membership shall be set at not less than are fifteen and not greater than age twenty-one;

(2) the process for admission to membership for each membership class; and

(3) the rights and privileges of each membership class, provided that only benefit members shall have the right to vote on the management of the insurance affairs of the society.

(b) A society may also admit social members who shall have no voice or vote in the management of the insurance affairs of the society

- (c) Membership rights in the society are personal to the member and are not assignable.

§ 6207. Location of office, meetings, communications to members, grievance procedures.

(a) The principal office of any domestic society shall be located in this State. The meetings of its supreme governing body may be held in any state, district, province or territory wherein such society has at least one (1) subordinate lodge, or in such other location as determined by the supreme governing body, and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State. The minutes of the proceedings of the supreme governing body and of the board of directors shall be in the English language.

(b) (1) A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. Such required reports, notices and statements shall be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.

(2) Not later than first day of June of each year, a synopsis of the society's annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society or, in lieu thereof, such synopsis may be published in the society's official publication.

(c) A society may provide in its laws or rules for grievance or complaint procedures for members.

§ 6208. No personal liability.

(a) The officers and members of the supreme governing body or any subordinate body of a society shall not be personally liable for any benefits provided by a society

(b) Any person may be indemnified and reimbursed by any society for expenses reasonably incurred by, and liabilities imposed upon, such person in connection with or arising out of any action, suit or proceeding, whether civil, criminal, administrative or investigative, or threat thereof, in which the person may be involved by reason of the fact that he or she is or was a director, officer, employee or agent of the society or of any firm, corporation or organization which he or she served in any capacity at the request of the society. A person shall not be so indemnified or reimbursed (i) in relation to any matter in such action, suit or proceeding as to which he or she shall finally be adjudged to be or have been guilty of breach of a duty as a director, officer, employee or agent of the society or (ii) in relation to any matter in such action, suit or proceeding, or threat thereof, which has been made the subject of a compromise settlement; unless in either such case the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that his or her conduct was unlawful. The determination whether the conduct of such person met the standard required in order to justify indemnification and reimbursement in relation to any matter described in subpoints (i) or (ii) of the preceding sentence may only be made by the supreme governing body or board of directors by a majority vote of a quorum, consisting of persons who were not parties to such action, suit or proceeding or by a court of competent jurisdiction. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, as to such person shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement shall not be exclusive of other rights to which such person may be entitled as a matter of law and shall inure to the benefit of his or her heirs, executors and administrators.

(c) A society shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the society, or who is or was serving at the request of the society as a director, officer, employee or agent of any other firm, corporation, or organization against any liability asserted against such person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the society would have the power to indemnify the person against such liability under this .

(d) No director, officer, employee, member or volunteer of a society serving without compensation, shall be liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such person for the society unless such act or omission involved willful or wanton misconduct.

§ 6209. Waiver.

The laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws of the society. Such provision shall be binding on the society and every member and beneficiary of a member.

Subchapter III. Governance

§ 6210. Organization.

A domestic society organized on or after the effective date of this chapter shall be formed as follows:

(1) Seven or more citizens of the United States, a majority of whom are citizens of this State, who desire to form a fraternal benefit society shall form a corporation without capital stock the governing body of which is elected and the powers of which are not more liberal than as provided in this Chapter and the name of which shall not so closely resemble the name of any society or insurance company then licensed in Delaware as to be confusing.

(2) Its certificate of incorporation, duly certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society the names, residences and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme governing body, which election shall be held not later than 1 year from the date of issuance of the permanent certificate of authority and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within 1 year shall be filed with the Commissioner, who may require such further information as the Commissioner deems necessary. The bond with sureties approved by the Commissioner shall be in such amount, not less than \$300,000, nor more than \$1,500,000, as required by the Commissioner. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the Commissioner shall so certify, retain and file the certificate of incorporation and shall furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members as hereinafter provided.

(3) No preliminary certificate of authority granted under the provisions of this shall be valid after one year from its date or after such further period, not exceeding 1 year, as may be authorized by the Commissioner upon cause shown, unless the 500 applicants hereinafter required have been secured and the organization has been completed as herein provided. The charter and all other proceedings thereunder shall become null and void in 1 year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business as hereinafter provided.

(4) Upon receipt of a preliminary certificate of authority from the Commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each such applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any benefit to any person until:

a. actual bona fide applications for benefits have been secured on not less than five hundred (500) applicants, and any necessary evidence of insurability has been furnished to and approved by the society;

b. at least 10 subordinate lodges have been established into which the five hundred applicants have been admitted;

c. there has been submitted to the Commissioner, under oath of the president or secretary, or corresponding officer of the society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted and premiums therefor; and

d. it shall have been shown to the Commissioner, by sworn statement of the treasurer, or corresponding officer of such society, that at least 500 applicants have each paid in cash at least 1 regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least \$150,000. Said advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within 1 year, as herein provided, such premiums shall be returned to said applicants.

(5) The Commissioner may make such examination and require such further information as the Commissioner deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the Commissioner shall issue to the society a certificate of authority to that effect and that the society is authorized to transact business pursuant to the provisions of this chapter. The certificate of authority shall be prima facie evidence of the existence of the society at the date of such certificate. The Commissioner shall cause a record of such certificate of authority to be made. A certified copy of such record may be given in evidence with like effect as the original certificate of authority.

(6) Any incorporated society authorized to transact business in this State at the time this chapter becomes effective shall not be required to reincorporate.

§ 6211. Amendments to laws.

(a) A domestic society may amend its laws in accordance with the provisions thereof by action of its supreme governing body at any regular or special meeting thereof or, if its laws so provide, by referendum. Such referendum may be held in accordance with the provisions of its laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members or by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum shall be adopted unless, within 6 months from the date of submission thereof, a majority of the members voting shall have signified their consent to such amendment by one of the methods herein specified.

(b) No amendment to the laws of any domestic society shall take effect unless approved by the Commissioner who shall approve such amendment if the Commissioner finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this State or with the character, objects and purposes of the society. Unless the Commissioner shall disapprove any such amendment within 60 days after the filing of same, such amendment shall be considered approved. The approval or disapproval of the Commissioner shall be forwarded in writing, and mailed to the secretary or corresponding officer of the society at its principal office. In case the Commissioner disapproves such amendment, the reasons therefor shall be stated in such written notice.

(c) Within 90 days from the approval thereof by the Commissioner, all such amendments, or a synopsis thereof, shall be furnished to all members of the society either by mail or by publication in full in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that such amendments or synopsis thereof, have been furnished the addressee.

(d) Every foreign or alien society authorized to do business in this State shall file with the Commissioner a duly certified copy of all amendments of, or additions to, its laws within 90 days after the enactment of same.

(e) Printed copies of the laws as amended, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof.

§ 6212. Institutions.

(a) A society may create, maintain and operate, or may establish organizations to operate, not for profit institutions to further the purposes permitted by §6205(a)(2) of this title. Such institutions may furnish services free or at a reasonable charge. Any real or personal property owned, held or leased by the society for this purpose shall be reported in every annual statement but shall not be allowed as an admitted asset of such society.

(b) No society shall own or operate funeral homes or undertaking establishments.

§ 6213. Reinsurance.

(a) A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer (other than another fraternal benefit society) having the power to make such reinsurance and authorized to do business in this State, or if not so authorized, one which is approved by the Commissioner, but no such society may reinsure substantially all of its insurance in force without the written permission of the Commissioner. It may take credit for the reserves on such ceded risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability, to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after the effective date of this chapter, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

(b) Notwithstanding the limitation in sub l of this , a society may reinsure the risks of another society in a consolidation or merger approved by the Commissioner under §6214 of this title.

§ 6214. Consolidations and mergers.

(a) A domestic society may consolidate or merge with any other society by complying with the provisions of this and the applicable provisions of the statutes of this state governing the merger or consolidation of nonstock corporations. It shall file with the Commissioner:

(1) a certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(2) a sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the Commissioner, but not earlier than December 31 next preceding the date of the contract;

(3) a certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society, such vote being conducted at a regular or special meeting of each such body, or, if the society's laws so permit, by mail; and

(4) evidence that at least 60 days prior to the action of the supreme governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.

(b) If the Commissioner finds that the contract is in conformity with the provisions of this , that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, the Commissioner shall approve the contract and issue a certificate to such effect. Upon such approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. In such event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state or territory and a certificate of such approval filed with the Commissioner of this State, or, if the laws of such state or territory contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the Commissioner of Insurance of such state or territory and a certificate of such approval filed with the Commissioner of this State.

(c) Upon the consolidation or merger becoming effective as herein provided, all the rights, franchises and interests of the consolidated or merged societies in and to every species of property, real, personal or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under the laws of this State in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after such consolidation or merger.

(d) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that such notice or document has been duly addressed and mailed, shall be prima facie evidence that such notice or document has been furnished the addressees.

§ 6215. Conversion of fraternal benefit society into a mutual life insurance company.

Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the applicable requirements of §4905 of this title. A plan of conversion shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting shall be necessary for the approval of such plan. No such conversion shall take effect unless and until approved by the Commissioner who may give such approval if the Commissioner finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

Subchapter IV. Contractual Benefits

§ 6216. Benefits.

- (a) A society may provide the following contractual benefits in any form:
- (1) death benefits;
  - (2) endowment benefits;
  - (3) annuity benefits;
  - (4) temporary or permanent disability benefits;
  - (5) hospital, medical or nursing benefits; and
  - (6) monument or tombstone benefits to the memory of deceased members;
  - (7) such other benefits as authorized for life insurers and which are not inconsistent with this chapter.
- (b) A society shall specify in its rules those persons who may be issued, or covered by, the contractual benefits in sub (a) of this , consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person.

§ 6217. Beneficiaries.

(a) The owner of a benefit contract shall have the right at all times to change the beneficiary or beneficiaries in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that no revocable beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the benefit contract.

(b) A society may make provision for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person

equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member, provided the portion so paid shall not exceed the sum of \$500 dollars.

(c) If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds shall be payable, the amount of such benefit, except to the extent that funeral benefits may be paid as hereinbefore provided, shall be payable to the personal representative of the deceased insured, provided that if the owner of the certificate is other than the insured, such proceeds shall be payable to such owner.

§ 6218. Benefits not attachable.

No money or other benefit, charity, relief or aid to be paid, provided or rendered by any society, shall be liable to attachment, garnishment or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society.

§ 6219. The Benefit Contract.

(a) Every society authorized to do business in this State shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided thereby. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this provision shall be void.

(b) Any changes, additions or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate, shall bind the owner and the beneficiaries, and shall govern and control the benefit contract in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition or amendment shall destroy or diminish benefits which the society contracted to give the owner as of the date of issuance.

(c) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(d) A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of such deficiency as ascertained by its board, and that if the payment is not made either (1) it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates; or (2) in lieu of or in combination with (1), the owner may accept a proportionate reduction in benefits under the certificate. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

(e) Copies of any of the documents mentioned in this , certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

(f) No certificate shall be delivered or issued for delivery in this State unless a copy of the form has been filed with and approved by the Commissioner in the manner provided for like policies issued by life and disability insurers in this State. Every life, accident and sickness, health or disability insurance certificate and every annuity certificate issued on or after one year from the effective date of this chapter must be filed with and approved by the Commissioner and shall meet the standard contract provision requirements not inconsistent with this chapter for like policies issued by life and disability insurers in this State, except that a society may provide for a grace

period for payment of premiums of 1 full month in its certificates. The certificate shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium. Any filing made hereunder shall be deemed approved unless disapproved within 60 days from the date of such filing.

(g) Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control of ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and may provide in all other respects for the regulation, government and control of such certificates and all rights, obligations and liabilities incident thereto and connected therewith. Ownership rights prior to such transfer shall be specified in the certificate.

(h) A society may specify the terms and conditions on which benefit contracts may be assigned.

§ 6220. Nonforfeiture benefits, cash surrender values, certificate loans and other options.

(a) For certificates issued prior to 1 year after the effective date of this chapter, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall comply with the provisions of law applicable immediately prior to the effective date of this chapter.

(b) For certificates issued on or after 1 year from the effective date of this chapter for which reserves are computed on the Commissioner's 1941 Standard Ordinary Mortality Table, the Commissioner's 1941 Standard Industrial Table or the Commissioner's 1958 Standard Ordinary Mortality Table, or the Commissioner's 1980 Standard Mortality Table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the corresponding amount ascertained in accordance with the laws of this State applicable to life insurers issuing policies containing like benefits based upon such tables.

Subchapter V. Financial

§ 6221. Investments.

A society shall invest its funds only in such investments as are authorized by the laws of this State for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this State which invests its funds in accordance with the laws of the state, district, territory, country or province in which it is incorporated, shall be held to meet the requirements of this for the investment of funds.

§ 6222. Funds.

(a) All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment on the surrender of any part thereof, except as provided in the benefit contract.

(b) A society may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

(c) A society may, pursuant to resolution of its supreme governing body, establish and operate one or more separate accounts and issue contracts on a variable basis, subject to the provisions of law regulating life insurers establishing such accounts and issuing such contracts. To the extent the society deems it necessary in order to comply with any applicable federal or state laws, or any rules issued thereunder, the society may adopt special procedures for the conduct of

the business and affairs of a separate account, may, for persons having beneficial interests therein, provide special voting and other rights, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account, and may issue contracts on a variable basis to which subs (b) and (d) of §6219 of this title shall not apply.

§ 6223. Exemptions Application of Other Code Provisions.

(a) Except as herein provided, societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this State, not only in governmental relations with this State, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein.

(b) Societies shall also be subject to §§505 to 509 inclusive, §523, §527 to §529 inclusive, §530, §532, §1101, §1102, §1105, §1108 and §1115 to §1118 inclusive.

§ 6224. Taxation.

Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax other than taxes on real estate and office equipment.

Subchapter VI. Regulation

§ 6225. Valuation.

(a) Standards of valuation for certificates issued prior to 1 year after the effective date of this chapter shall be those provided by the laws applicable immediately prior to the effective date of this chapter.

(b) The minimum standards of valuation for certificates issued on or after 1 year from the effective date of this chapter shall be based on the following tables:

(1) For certificates of life insurance - the Commissioner's 1941 Standard Ordinary Mortality Table, the Commissioner's 1941 Standard Industrial Mortality Table, the Commissioner's 1958 Standard Ordinary Mortality Table, the Commissioner's 1980 Standard Ordinary Mortality Table or any more recent table made applicable to life insurers;

(2) For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for non-cancelable accident and health benefits - such tables as are authorized for use by life insurers in this State.

All of the above shall be under valuation methods and standards (including interest assumptions) in accordance with the laws of this State applicable to life insurers issuing policies containing like benefits.

(c) The Commissioner may, in his or her discretion, accept other standards for valuation if the Commissioner finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The Commissioner may, in his or her discretion, vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this State.

(d) Any society, with the consent of the Commissioner of Insurance of the state of domicile of the society and under such conditions, if any, which the Commissioner may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any benefit member shall not be affected thereby.

§ 6226. Reports.

Reports shall be filed in accordance with the provisions of this .

(1) Every society transacting business in this State shall annually, on or before the 1st day of March, unless for cause shown such time has been extended by the Commissioner, file with the Commissioner a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay a fee of \$25 for filing same. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the Commissioner.

(2) As part of the annual statement herein required, each society shall, on or before the 1st day of March, file with the Commissioner a valuation of its certificates in force on December 31 last preceding, provided the Commissioner may, in his or her discretion for cause shown, extend the time for filing such valuation for not more than 2 calendar months. Such valuation shall be done in accordance with the standards specified in §6225 of this title. Such valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(3) A society neglecting to file the annual statement in the form and within the time provided by this may be subject to a fine of \$100 dollars for each day during which such neglect continues, and its authority to do business in this State may be suspended by the Commissioner while such default continues.

§ 6227. Annual License.

Societies which are now authorized to transact business in this State may continue such business until the 1st day of April next succeeding the effective date of this chapter. The authority of such societies and all societies hereafter licensed may thereafter be renewed annually, but in all cases to terminate on the 1st day of the succeeding April. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the Commissioner \$25. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

§ 6228. Examination of societies; no adverse publications.

(a) The Commissioner, or any person he or she may appoint, may examine any domestic, foreign or alien society transacting or applying for admission to transact business in this State in the same manner as authorized for examination of domestic, foreign or alien insurers. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers shall also be applicable to the examination of societies.

(b) The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the Commissioner.

§ 6229. Foreign or alien society - admission.

No foreign or alien society shall transact business in this State without a license issued by the Commissioner. Any such society desiring admission to this State shall comply substantially with the requirements and limitations of this chapter applicable to domestic societies. Any such society may be licensed to transact business in this State upon filing with the Commissioner:

- (1) a duly certified copy of its chapters of incorporation;
- (2) a copy of its bylaws, certified by its secretary or corresponding officer;
- (3) a power of attorney to the Commissioner as prescribed in §6235 of this title;
- (4) a statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the Commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province or country, satisfactory to the Commissioner;

- (5) certification from the proper official of its home state, territory, province or country that the society is legally incorporated and licensed to transact business therein;
- (6) copies of its certificate forms; and
- (7) such other information as the Commissioner may deem necessary;

upon a showing that its assets are invested in accordance with the provisions of this chapter.

§ 6230. Injunction - liquidation - receivership of domestic society.

(a) When the Commissioner upon investigation finds that a domestic society has exceeded its powers, has failed to comply with any provision of this chapter, is not fulfilling its contracts in good faith, has a membership of less than 400 after an existence of 1 year or more, or is conducting business fraudulently or in a manner hazardous to its members, creditors or the public, the Commissioner shall notify the society of such deficiency or deficiencies and state in writing the reasons for his or her dissatisfaction. The Commissioner shall simultaneously issue a written notice to the society requiring that the deficiency or deficiencies which exist be corrected. After such notice the society shall have a 30 day period in which to comply with the Commissioner's request for correction, and if the society fails to comply, the Commissioner shall take such action as is necessary and appropriate under Chapter 59 of this title.

(b) The Commissioner may take such action as is necessary and appropriate under this as respects a domestic society which shall voluntarily determine to discontinue business.

§ 6231. Suspension, revocation or refusal of license of foreign or alien society.

(a) When the Commissioner upon investigation finds that a foreign or alien society transacting or applying to transact business in this State:

- (1) has exceeded its powers;
- (2) has failed to comply with any of the provisions of this chapter;
- (3) is not fulfilling its contracts in good faith; or

(4) is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public; the Commissioner shall notify the society of such deficiency or deficiencies and state in writing the reasons for his or her dissatisfaction. The Commissioner shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist are corrected. After such notice the society shall have a 30 day period in which to comply with the Commissioner's request for correction, and if the society fails to comply the Commissioner shall notify the society of such findings of noncompliance and require the society to show cause on a date named why its license should not be suspended, revoked or refused. If on such date the society does not present good and sufficient reason why its authority to do business in this State should not be suspended, revoked or refused, the Commissioner may suspend or refuse the license of the society to do business in this State until satisfactory evidence is furnished to the Commissioner that such suspension or refusal should be withdrawn or the Commissioner may revoke the authority of the society to do business in this State.

(b) Nothing contained in this shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this State during the time such society was legally authorized to transact business herein.

§ 6232. Injunction.

No application or petition for injunction against any domestic, foreign or alien society, or lodge thereof, shall be recognized in any court of this State unless made by the attorney-general upon request of the Commissioner.

§ 6233. Licensing of agents.

(a) Agents of societies shall be licensed in accordance with the provisions of Chapter 17 of this title. Agents licensed prior to the effective date of this chapter shall not be required to take a written or other examination.

(b) No examination or license shall be required of any regular salaried officer, employee or member of a licensed society who devotes substantially all of his or her services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained.

(c) Any agent or representative of a society who devotes, or intends to devote, less than 50% of his time to solicitation and procurement of insurance contracts for such society shall be exempt from the requirements of paragraph (a) of this . Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of \$125,000, or, in the case of any other kind or kinds of insurance which the society might write, on the persons of more than 25 individuals and who has received or will receive a commission or other compensation therefor shall be presumed to be devoting, or intending to devote, 50% of his time to the solicitation or procurement of insurance contracts for such society.

§ 6234. Unfair methods of competition and unfair and deceptive acts and practices.

Every society authorized to do business in this State shall be subject to Chapter 23 of this title relating to unfair practices; provided, however, that nothing therein shall be construed as applying to or affecting the right of any society to determine its eligibility requirements for membership, or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society.

Subchapter VII. Miscellaneous

§ 6235. Service of process.

(a) Every society authorized to do business in this State shall appoint in writing the Commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree in such writing that any lawful process against it which is served on such attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this State. Copies of such appointment, certified by the Commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted.

(b) Service shall only be made upon the Commissioner, or if absent, upon the person in charge of his or her office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the Commissioner, he shall forthwith forward 1 of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. No such service shall require a society to file its answer, pleading or defense in less than 30 days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner herein provided.

(c) At the time of serving any process upon the Commissioner, the plaintiff or complainant in the action shall pay to the Commissioner a fee of \$2.

§ 6236. Penalties.

(a) A person who shall knowingly or willfully make any false or fraudulent statement or representation in or relating to any application for membership or for the purpose of obtaining money from or a benefit in any society, shall be guilty of a misdemeanor and upon conviction be fined not less than \$100 nor more than \$500, or imprisoned in the county jail not less than 30 days nor more than 1 year, or both.

(b) Any person who willfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by this chapter, or of any material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring payment of a benefit named in the certificate, shall be guilty of perjury and shall be subject to the penalties therefor prescribed by law.

(c) Any person who solicits membership for, or in any manner assists in procuring membership in, any society not licensed to do business in this State shall upon conviction, be fined not less than \$100 nor more than \$500.

(d) Any person guilty of a willful violation of, or neglect or refusal to comply with, the provisions of this chapter for which a penalty is not otherwise prescribed, shall upon conviction, be subject to the penalties provided by §106 (General penalty) of this title.

§ 6237. Exemption of certain societies.

(a) Nothing contained in this chapter shall be so construed as to affect or apply to:

(1) grand or subordinate lodges of societies, orders or associations now doing business in this State which provide benefits exclusively through local or subordinate lodges.

(2) Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business; and the ladies societies or ladies auxiliaries to such orders, societies or associations;

(3) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than \$400 or disability benefits of not more than \$350 to any person in any 1 year, or both;

(4) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than \$400 or for disability benefits of not more than \$350 to any one person in any 1 year, or both.

(b) Any such society or association described in paragraph (3) or (4) of sub (a) of this which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in paragraph (4) which has more than 1,000 members, shall not be exempted from the provisions of this chapter but shall comply with all requirements thereof

(c) No society which, by the provisions of this , is exempt from the requirements of this chapter, except any society described in paragraph (2) of sub (a) of this , shall give or allow, or promise to give or allow to any person any compensation for procuring new members.

(d) Every fraternal benefit society heretofore organized and incorporated and which provides exclusively for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this chapter except that the privileges thereof relating to medical examination, valuations of benefit certificates, and incontestability shall not apply to such society.

(e) The Commissioner may require from any society or association, by examination or otherwise, such information as will enable the Commissioner to determine whether such society or association is exempt from the provisions of this chapter.

(f) Societies exempted under the provisions of this shall also be exempt from all other provisions of the insurance laws of this State.

§ 6238. Review.

All decisions and findings of the Commissioner made under the provisions of this chapter shall be subject to review as set forth in Chapter 3 of this title and in Chapter 101 of Title 29.

2. Severability.

If any provision of this act or application thereof to any person, entity or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act, and to this end the provisions of this Act are severable.

3. Repeals.

Paragraph (6) of §1723, Title 18, and Chapter 61, Title 18, of the Delaware Code are hereby repealed.

4. Effective date.

This Act shall become effective on January 1, 1997.

Approved July 18, 1996

CHAPTER 534

FORMERLY

SENATE BILL NO. 403  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 23, TITLE 19 OF THE DELAWARE CODE RELATING TO THE INDUSTRIAL ACCIDENT BOARD.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Strike §2346 of Chapter 23, Title 19 in its entirety and substitute in lieu thereof a new section designated §2346 to read as follows:

"§2346. Hearing upon disagreement on charges for medical and other services.

If any person charged with the payment of medical and other services and the provider to whom said payment is due fail to reach an agreement in regard to such charges, any interested party may notify the Board of the facts and the Board shall thereupon, after notice of the time and place of hearing sent by registered mail to all parties in interest, hear and determine the matter. No party to the proceedings shall have any liability for the payment of charges in excess of the amount deemed reasonable and necessary provided that the provider is subject to the jurisdiction of the Board and made a party to the proceedings. As provided in Chapter 21, Section 2124, Title 19 of the Delaware Code, the Board may, in any case, appoint a disinterested and duly-qualified physician to make any necessary medical examination of the employee and testify in respect thereto."

Section 2. This act shall take effect January 1, 1997 and shall apply to services provided after that date.

Approved July 18, 1996

## CHAPTER 535

## FORMERLY

## SENATE BILL NO. 428

## AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO LICENSURE REQUIREMENTS FOR PROFESSIONAL COUNSELORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3008 (2), Title 24, Delaware Code by deleting said sub-section in its entirety and inserting in lieu thereof, the following:

"The applicant shall submit proof satisfactory to the Board that, subsequent to the completion of a master's degree, the applicant has acquired the equivalent of two years of experience in professional counseling acceptable to the Board. The professional counseling experience shall consist of not less than 3,200 hours obtained over a period of no more than four years, at least 1,600 hours of which shall have been under professional supervision acceptable to the Board. Acceptable supervision shall mean supervision by a licensed professional counselor. When such supervision is not available, the applicant may be supervised by a licensed clinical social worker, a licensed psychologist, or a licensed psychiatrist. An applicant may substitute 30 graduate semester hours or more attained beyond the master's degree for up to 1,600 hours of the required experience provided that such hours are clearly related to the field of counseling and are acceptable to the Board. In no case shall the applicant have less than 1,600 hours of the required post master's degree supervised professional experience."

Approved July 18, 1996

## CHAPTER 536

## FORMERLY

## SENATE BILL NO. 448

## AN ACT TO AMEND TITLE 16, DELAWARE CODE, RELATING TO GENERAL POWERS OF THE SECRETARY, DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend §122, Title 16 of the Delaware Code by adding thereto a new subsection to read as follows:

"1.1. Establish standards for regulation of lead-based paint hazard control activities, including the training and certification of workers engaged in lead-based paint activities, the establishment of work standards for lead-based paint hazard control, and the accreditation of lead-based paint hazard training programs.

2. Individuals meeting the minimum qualifications established by regulation who are engaged in lead-based paint activities shall obtain a license issued by the State Department of Health and Social Services upon receipt of an application and an annual license fee of \$25 for workers and \$50 for supervisors, project designers, contractors, inspectors and risk assessors.

3. All courses offered in Delaware by training providers for individuals engaged in lead-based paint activities shall be approved by the State Department of Health and Social Services. The training provider shall pay an annual fee of \$200 for each type of course for which training will be provided."

Approved July 18, 1996

CHAPTER 537

FORMERLY

SENATE BILL NO. 449  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 18 RELATING TO HEALTH INSURANCE CONTRACTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §3303, Chapter 33, Title 18 of the Delaware Code by adding the following subsection:

“(8) The policy shall contain no provision or non-disclosure clause prohibiting physicians or other health care providers from giving patients information regarding diagnoses, prognoses and treatment options.”

Section 2. Amend Chapter 33, Title 18 of the Delaware Code by adding thereto a new section §3339 as follows:

“§3339. Refusal to contract.

An insurer shall not refuse to contract with or compensate for covered services a participating or contracting healthcare provider solely because that provider has in good faith communicated with one or more of his current, former or prospective patients regarding the provisions, terms or requirements of the insurer’s products or services as they relate to the needs of that provider’s patients.”

Section 3. Amend Chapter 64, Title 18 of the Delaware Code by adding thereto the following new sections:

“§6407. Non-disclosure clause.

A health maintenance organization contract shall contain no provision or non-disclosure clause prohibiting physicians or other health care providers from giving patients information regarding diagnoses, prognoses and treatment options.

§6408. Refusal to contract.

A health maintenance organization shall not refuse to contract with or compensate for covered services an otherwise eligible health care provider solely because that provider has in good faith communicated with one or more of his current, former or prospective patients regarding the provisions, terms or requirements of the health maintenance organization’s products or services as they relate to the needs of that provider’s patients.”

Section 4. The provisions of this Act shall also apply to Health Service Corporations, and to policies delivered or issued for delivery in this State by Health Service Corporations.

Approved July 18, 1996

## CHAPTER 538

## FORMERLY

## SENATE BILL NO. 451

## AN ACT TO AMEND CHAPTER 5, OF TITLE 25, RELATING TO THE RULE AGAINST PERPETUITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §503, Chapter 5, Title 25 by deleting the Section in its entirety and adding in lieu thereof the following:

“§503. Rule Against Perpetuities

(a) No interest created in real property held in trust shall be void by reason of the common law rule against perpetuities and no interest created in personal property held in trust shall be void by reason of any rule against perpetuities, whether the common law rule or otherwise.

(b) In this State, the rule against perpetuities for real property held in trust is that at the expiration of 110 years from the later of the date on which a parcel of real property or an interest in real property is added to or purchased by a trust or the date the trust became irrevocable, such parcel or interest, if still held in such trust, shall be distributed in accordance with the trust instrument regarding distribution of such property upon termination of the trust as though termination occurred at that time, or if no such provisions exist, to the persons then entitled to receive the income of the trust in proportion to the amount of the income so receivable by such beneficiaries, or in equal shares if specific proportions are not specified in the trust instrument. In the event that the trust instrument does not provide for distribution upon termination and there are no income beneficiaries of the trust, such parcel or interest shall be distributed to such then-living persons who are then determined to be the trustor's or testator's distributees by the application of the intestacy laws of this State then in effect governing the distribution of intestate real property as though the trustor or testator had died at that particular time, intestate, a resident of this State, and owning the property so distributable.

This rule shall not apply to the following trusts, all of which may be perpetual:

(1) A trust for the benefit of one or more charitable organizations as described in §§170(c), 2055(a) and 2522(a) of the United States Internal Revenue Code of 1986 (Title 26 of the United States Code), or under any similar statute; or

(2) A trust created by an employer as part of a stock bonus plan, pension plan, disability or death benefit plan, or profit sharing plan for the exclusive benefit of some or all of its employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings or the principal, or both earnings and principal, of the fund held in trust; or

(3) A business trust formed under Chapter 38 of Title 12 for which a certificate of business trust is on file in the Office of the Secretary of State; or

(4) A trust of real or personal property created for the perpetual care of cemeteries pursuant to the provisions of Subchapter IV of Chapter 35 of Title 12 of the Delaware Code.

(c) For purposes of this rule against perpetuities, trusts created by the exercise of a power of appointment, whether limited or general, and whether by will, deed or other instrument, shall be deemed to have become irrevocable by the trustor or testator on the

date on which such exercise became irrevocable. Donors, not donees, of limited powers of appointment, and donees exercising, not donors of, general powers of appointment, shall be deemed the trustors or testators for purposes of distributions to the trustor's or testator's distributees pursuant to subsection (b) of this Section.

(d) The rule contained in this Section is subject to §§501 and 502 of this Title concerning powers of appointment."

Section 2. This Act shall apply to trust instruments becoming irrevocable before or after enactment of this Act.

Approved July 18, 1996

CHAPTER 539

FORMERLY

SENATE BILL NO. 454

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO COUNTY OR MUNICIPAL BUILDING, PLUMBING, ELECTRICAL AND OTHER CODES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 7602, Title 16 of the Delaware Code by deleting Sub-section (b) thereof in its entirety and inserting in lieu thereof the following:

"(b) The Division of Facilities Management in the Department of Administrative Services or its successor will promulgate procedures for certification of compliance with these codes and standards, provided, however, that:

(1) the respective local government shall have exclusive authority to designate and shall designate the effective date for compliance of lighting standards for existing buildings.

(2) the respective local government, rather than requiring that compliance with these codes and standards be certified by licensed engineers or architects for all classes of commercial structures, may elect to utilize a commercial buildings ASHRAE/IES Standard 90.1-1989 Compliance Guide, to include computerized software compliance packages or a locally-developed ASHRAE/IES Standard 90.1-1989 compliance checklist for insuring compliance for commercial structures of less than 5,000 square feet in size."

Approved July 18, 1996

## CHAPTER 540

## FORMERLY

## SENATE BILL NO. 462 .

## AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO WORKERS' COMPENSATION AND GROUP SELF-INSURANCE POOLS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 18 of the Delaware Code by striking the existing Chapter 4 thereof and by substituting in lieu thereof the following:

## "CHAPTER 4. WORKMEN'S COMPENSATION SELF-INSURANCE GROUPS

## §401. Scope.

The provisions of this chapter shall apply to workmen's compensation self-insurance groups of public and private employers. Groups which are issued a certificate of authority by the Commissioner shall be subject to the provisions of this chapter and Chapters 1, 3, 7, 11, 13, 17, 21, 23, 25, 26, 27, and 59 of this title and Subchapters IV and V of Chapter 23 of Title 19, as well as any regulations promulgated under those chapters, except as otherwise provided herein.

## §402. Definitions.

For purposes of this chapter:

(1) 'Administrator' means an individual, partnership, or corporation engaged by a workers' compensation self-insurance group's board of trustees to carry out the policies established by the group's board of trustees and to provide day-to-day management of the group.

(2) 'Commissioner' means the Commissioner of Insurance.

(3) 'Insolvent' or "insolvency" means the same as "impairment" or "insolvency" as those terms are defined in this title under §5901(1) as if the Group were a reciprocal insurer

(4) 'Net premium' means premium derived from standard premium adjusted by any advance premium discounts.

(5) 'Service company' means a person or entity which provides services not provided by the administrator, including but not limited to:

- a. Claims adjustment;
- b. Safety engineering;
- c. Compilation of statistics and the preparation of premium, loss, and tax reports;
- d. Preparation of other required self-insurance reports;
- e. Development of members' assessments and fees; and
- f. Administration of a claim fund.

(6) 'Standard premium' means the premium derived from the filed rates adjusted by experience modification factors but before advance premium discounts.

(7) 'Workmen's compensation,' or 'workers' compensation' when used as a modifier of 'benefits,' 'liabilities,' or 'obligations,' means both workmen's compensation and employers' liability.

(8) 'Workmen's compensation self-insurance group' or 'group' means a not-for-profit unincorporated association consisting of five or more private or public employers who are engaged in the same or similar type of business, who are members of the same bona fide trade or professional association which has been in existence for not less than five years, and who enter into agreements to pool their liabilities for workers' compensation benefits and employers' liability in this State.

(9) 'Public employer' means a county, incorporated municipality, school district, parking authority or other instrumentality or political subdivision of the State itself.

§403. Authority to Act as a Workmen's Compensation Self-Insurance Group.

No person, association, or other entity shall act as a workmen's compensation self-insurance group unless it has been issued a certificate of authority by the Commissioner.

§404. Qualifications for Initial Approval and Continued Authority to Act As  
A Workmen's Compensation Self-Insurance Group.

(a) A proposed workers' compensation self-insurance group shall file with the Commissioner its application for a certificate of approval accompanied by a non-refundable filing fee in accordance with §701 of this title. The application shall include the group's name, location of its principal office, date of organization, name and address of each member, and such other information as the Commissioner may reasonably require, together with the following:

- (1) Proof of compliance with the provisions of Subsection (b) of this section;
- (2) A copy of the articles of association, if any;
- (3) A copy of agreements with the administrator and with any service company;
- (4) A copy of the by-laws of the proposed group;

(5) A copy of the agreement between the group and each member securing the payment of workers' compensation benefits, which shall include provision for payment of assessments as provided for in §419 of this chapter;

(6) Designation of the initial board of trustees and administrator;

(7) The address in this State where the books and records of the group will be maintained at all times;

(8) A pro forma financial statement on a form acceptable to the Commissioner showing the financial ability of the group to pay the workers' compensation obligations of its members; and

(9) Proof of payment to the group by each member of not less than 25% of that member's first year estimated annual net premium on a date prescribed by the Commissioner. Each payment shall be considered to be part of the first-year premium payment of each member, if the proposed group is granted a certificate of approval.

(b) To obtain and to maintain its certificate of authority, a workers' compensation self-insurance group shall comply with the following requirements as well as any other requirements established by law or regulation:

(1) A combined net worth of all members of a group of private employers of at least \$1,000,000. Specific and aggregate excess insurance in a form, amount and by an insurance company acceptable to the Commissioner for a group of public employers.

(2) Security in a form and amount prescribed by the Commissioner which shall be provided by either a surety bond, security deposit, or financial security endorsement or any combination thereof. If a surety bond is used to meet the security requirement, it shall be issued by a corporate surety company authorized to transact business in this State. If a security deposit

is used to meet the security requirement, securities shall be limited to bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by an agency or instrumentality thereof; certificates of deposit in a federally insured bank; shares or savings deposits in a federally insured savings and loan association or credit union; or any bond or security issued by a state of the United States of America and backed by the full faith and credit of the state. Any such securities shall be deposited in accordance with Section 1504 of this title and assigned to and made negotiable by the Chairman of the Industrial Accident Board and the Commissioner pursuant to a trust document acceptable to the Commissioner. Interest accruing on a negotiable security so deposited shall be collected and transmitted to the depositor, provided the depositor is not in default. A financial security endorsement, issued as part of an acceptable excess insurance contract, may be used to meet all or part of the security requirement. The bond, security deposit, or financial security endorsement shall be:

- a. For the benefit of the State solely to pay claims and associated expenses:
- and
- b. Payable upon the failure of the group to pay workers' compensation benefits that it is legally obligated to pay.

The Commissioner may establish and adjust from time to time, requirements for the amount of security based on differences among groups in their size, types of employment, years in existence, and other relevant factors.

(3) Specific and aggregate excess insurance in a form, in an amount, and by an insurance company acceptable to the Commissioner. The Commissioner may establish minimum requirements for the amount of specific and aggregate excess insurance based on differences among groups in their size, types of employment, years in existence, and other relevant factors, and may permit a group to meet this requirement by placing in a designated depository securities of the type referred to in Paragraph 2 of this subsection.

(4) An estimated annual standard premium of at least \$250,000 during a group's first year of operation.

(5) An indemnity agreement jointly and severally binding the group and each member thereof to meet the workmen's compensation obligations of each member. The indemnity agreement shall be in a form prescribed by the Commissioner and shall include minimum uniform substantive provisions prescribed by the Commissioner. Subject to the Commissioner's approval, a group may add other provisions needed because of its particular circumstances.

(6) A fidelity bond for the administrator in a form and amount prescribed by the Commissioner.

(7) A fidelity bond for the service company in a form and amount prescribed by the Commissioner. The Commissioner may also require the service company providing claim services to furnish a performance bond in a form and amount prescribed by the Commissioner.

(c) A group shall notify the Commissioner of any change in the information required to be filed under subsection (a) of this section or in the manner of its compliance with subsection (b) of this section no later than 30 days after the change.

(d) The Commissioner shall evaluate the information provided by the application required to be filed under subsection (a) of this section to assure that no gaps in funding exist and that funds necessary to pay workers' compensation benefits will be available on a timely basis

(e) The Commissioner shall act upon a completed application for a certificate of approval within 60 days. If, because of the number of applications, the Commissioner is unable to act upon an application within this period, the Commissioner shall have an additional 60 days to act.

(f) The Commissioner shall issue to the group a certificate of approval upon finding that the proposed group has met all requirements, or the Commissioner shall issue an order refusing

the certification, setting forth reasons for refusal upon finding that the proposed group does not meet all requirements.

(g) Each workers' compensation self-insurance group shall be deemed to have appointed the Commissioner as its attorney to receive service of legal process issued against it in this State. The appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this State any obligation or liability of the group for workers' compensation benefits.

§405. Certificate of Authority; Termination.

(a) The certificate of authority issued by the Commissioner to a workmen's compensation self-insurance group authorizes the group to provide workmen's compensation benefits and employer's liability coverage. The certificate of authority remains in effect until terminated at the request of the group or revoked by the Commissioner, pursuant to provisions of §423 of this chapter.

(b) The Commissioner shall not grant the request of any group to terminate its certificate of authority unless the group has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the Commissioner. Such obligations shall include both known claims and expenses associated therewith and claims reported but not reported and expenses associated therewith.

Subject to the approval of the Commissioner, a group may merge with another group engaged in the same or similar type of business only if the resulting group assumes in full all obligations of the merging groups. The Commissioner may hold a hearing on the merger and shall do so if any party, including a member of either group, so requests.

§406. Examinations.

The Commissioner, pursuant to Chapter 5 of this title, may examine the affairs, transactions, accounts, records, and assets and liabilities of each group as often as the Commissioner deems advisable. The expense of such examinations shall be assessed against the group in the same manner that insurers are assessed for examinations.

§407. Board of Trustees; Membership, Powers, Duties, and Prohibitions.

Each group shall be operated by a board of trustees which shall consist of not less than five persons whom the members of a group elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers, or directors of members of the group. The group's administrator, service company, or any owner, officer, employee of, or any other person affiliated with, such administrator or service company shall not serve on the board of trustees of the group. All trustees shall be residents of this State or officers of corporations authorized to do business in this State. The board of trustees of each group shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group, including all of the following:

(a) The board of trustees shall:

(1) Maintain responsibility for all monies collected or disbursed from the group and segregate all monies into a claims fund account and an administrative fund account. At least 70% of the net premium shall be placed into a designated depository for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance, and special fund contributions, including second injury and other loss-related funds. This shall be called the "claims fund account." The remaining net premium shall be placed into a designated depository for the payment of taxes, general regulatory fees and assessments, and administrative costs. This shall be called the "administrative fund account." The Commissioner may approve an administrative fund account of more than 30% and a claims fund account of less than 70% only if the group shows to the Commissioner's satisfaction that:

- a. More than 30% is needed for an effective safety and loss control program; or

is used to meet the security requirement, securities shall be limited to bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by an agency or instrumentality thereof; certificates of deposit in a federally insured bank; shares or savings deposits in a federally insured savings and loan association or credit union; or any bond or security issued by a state of the United States of America and backed by the full faith and credit of the state. Any such securities shall be deposited in accordance with Section 1504 of this title and assigned to and made negotiable by the Chairman of the Industrial Accident Board and the Commissioner pursuant to a trust document acceptable to the Commissioner. Interest accruing on a negotiable security so deposited shall be collected and transmitted to the depositor, provided the depositor is not in default. A financial security endorsement, issued as part of an acceptable excess insurance contract, may be used to meet all or part of the security requirement. The bond, security deposit, or financial security endorsement shall be:

- a. For the benefit of the State solely to pay claims and associated expenses;
- and
- b. Payable upon the failure of the group to pay workers' compensation benefits that it is legally obligated to pay.

The Commissioner may establish and adjust from time to time, requirements for the amount of security based on differences among groups in their size, types of employment, years in existence, and other relevant factors.

(3) Specific and aggregate excess insurance in a form, in an amount, and by an insurance company acceptable to the Commissioner. The Commissioner may establish minimum requirements for the amount of specific and aggregate excess insurance based on differences among groups in their size, types of employment, years in existence, and other relevant factors, and may permit a group to meet this requirement by placing in a designated depository securities of the type referred to in Paragraph 2 of this subsection.

(4) An estimated annual standard premium of at least \$250,000 during a group's first year of operation.

(5) An indemnity agreement jointly and severally binding the group and each member thereof to meet the workmen's compensation obligations of each member. The indemnity agreement shall be in a form prescribed by the Commissioner and shall include minimum uniform substantive provisions prescribed by the Commissioner. Subject to the Commissioner's approval, a group may add other provisions needed because of its particular circumstances.

(6) A fidelity bond for the administrator in a form and amount prescribed by the Commissioner.

(7) A fidelity bond for the service company in a form and amount prescribed by the Commissioner. The Commissioner may also require the service company providing claim services to furnish a performance bond in a form and amount prescribed by the Commissioner.

(c) A group shall notify the Commissioner of any change in the information required to be filed under subsection (a) of this section or in the manner of its compliance with subsection (b) of this section no later than 30 days after the change.

(d) The Commissioner shall evaluate the information provided by the application required to be filed under subsection (a) of this section to assure that no gaps in funding exist and that funds necessary to pay workers' compensation benefits will be available on a timely basis.

(e) The Commissioner shall act upon a completed application for a certificate of approval within 60 days. If, because of the number of applications, the Commissioner is unable to act upon an application within this period, the Commissioner shall have an additional 60 days to act.

(f) The Commissioner shall issue to the group a certificate of approval upon finding that the proposed group has met all requirements, or the Commissioner shall issue an order refusing

the certification, setting forth reasons for refusal upon finding that the proposed group does not meet all requirements.

(g) Each workers' compensation self-insurance group shall be deemed to have appointed the Commissioner as its attorney to receive service of legal process issued against it in this State. The appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this State any obligation or liability of the group for workers' compensation benefits.

#### §405. Certificate of Authority; Termination.

(a) The certificate of authority issued by the Commissioner to a workmen's compensation self-insurance group authorizes the group to provide workmen's compensation benefits and employer's liability coverage. The certificate of authority remains in effect until terminated at the request of the group or revoked by the Commissioner, pursuant to provisions of §423 of this chapter.

(b) The Commissioner shall not grant the request of any group to terminate its certificate of authority unless the group has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the Commissioner. Such obligations shall include both known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith.

Subject to the approval of the Commissioner, a group may merge with another group engaged in the same or similar type of business only if the resulting group assumes in full all obligations of the merging groups. The Commissioner may hold a hearing on the merger and shall do so if any party, including a member of either group, so requests.

#### §406. Examinations.

The Commissioner, pursuant to Chapter 5 of this title, may examine the affairs, transactions, accounts, records, and assets and liabilities of each group as often as the Commissioner deems advisable. The expense of such examinations shall be assessed against the group in the same manner that insurers are assessed for examinations.

#### §407. Board of Trustees; Membership, Powers, Duties, and Prohibitions.

Each group shall be operated by a board of trustees which shall consist of not less than five persons whom the members of a group elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers, or directors of members of the group. The group's administrator, service company, or any owner, officer, employee of, or any other person affiliated with, such administrator or service company shall not serve on the board of trustees of the group. All trustees shall be residents of this State or officers of corporations authorized to do business in this State. The board of trustees of each group shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group, including all of the following:

(a) The board of trustees shall:

(1) Maintain responsibility for all monies collected or disbursed from the group and segregate all monies into a claims fund account and an administrative fund account. At least 70% of the net premium shall be placed into a designated depository for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance, and special fund contributions, including second injury and other loss-related funds. This shall be called the "claims fund account." The remaining net premium shall be placed into a designated depository for the payment of taxes, general regulatory fees and assessments, and administrative costs. This shall be called the "administrative fund account." The Commissioner may approve an administrative fund account of more than 30% and a claims fund account of less than 70% only if the group shows to the Commissioner's satisfaction that:

a. More than 30% is needed for an effective safety and loss control program; or

b. The group's aggregate excess insurance attaches at less than 70%.

(2) Maintain minutes of its meetings and make the minutes available to the Commissioner.

(3) Designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.

(4) Retain an independent certified public accountant to prepare the statement of financial condition required by §411(a) of this chapter.

(b) The board of trustees shall not:

(1) Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the Commissioner.

(2) Borrow any monies from the group or in the name of the group except in the ordinary course of business, without first advising the Commissioner of the nature and purpose of the loan and obtaining prior approval from the Commissioner.

#### §408. Group Membership; Termination; Liability.

(a) An employer joining a workers' compensation self-insurance group after the group has been issued a certificate of authority shall:

(1) Submit an application for membership to the board of trustees or its administrator; and

(2) Enter into the indemnity agreement required by §404(b)(5) of this chapter. Membership takes effect no earlier than each member's date of approval.

The application for membership and its approval shall be maintained as permanent records of the board of trustees.

(b) Individual members of a group shall be subject to cancellation by the group pursuant to the by-laws of the group. In addition, individual members may elect to terminate their participation in the group. The group shall notify the Commissioner and the workers' compensation agency of the termination or cancellation of a member within 10 days and shall maintain coverage of each canceled or terminated member for 30 days after notice, at the terminating member's expense, unless the group is notified sooner by the workers' compensation agency that the canceled or terminated member has procured workers' compensation insurance, has become an approved self-insurer, or has become a member of another group.

(c) The group shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member who elects to terminate its membership or is canceled by a group remains jointly and severally liable for workers' compensation obligations of the group and its members which were incurred during the canceled or terminated member's period of membership.

(d) A group member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment by the group or the member of required workers' compensation benefits.

(e) The insolvency or bankruptcy of a member does not relieve the group or any other member of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

#### §409. Service Companies.

(a) No service company or its employees, officer, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, an administrator. No

administrator or its employees, officer, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, a service company.

(b) The service contract shall state that unless the Commissioner permits otherwise, the service company shall handle, to their conclusion, all claims and other obligations incurred during the contract period.

§410. Licensing of Agent.

Except for a salaried employee of a group, its administrator, or its service company, any person soliciting membership for a workers' compensation self-insurance group must be licensed as provided in Chapter 17 of this title.

§411. Financial Statements and Other Reports.

(a) Each group shall submit to the Commissioner a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year. The financial statement shall be on a form prescribed by the Commissioner and shall include, but not be limited to, actuarially appropriate reserves for:

- (1) Known claims and expenses associated therewith;
- (2) Claims incurred but not reported and expenses associated therewith;
- (3) Unearned premiums; and
- (4) Bad debts,

which reserves shall be shown as liabilities.

(b) An actuarial opinion regarding reserves for:

- (1) Known claims and expenses associated therewith; and
- (2) Claims incurred but not reported and expenses associated therewith shall be included in the audited financial statement.

The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners.

(c) No person shall make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, in connection with the solicitation of membership in a group.

(d) The Commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, payroll audit reports, summary loss reports, and quarterly financial statements.

§412. Taxes.

Groups shall be subject to the provisions of Subchapter V of Chapter 23 of Title 19 for the payment of premium tax.

§413. Fees and Assessments.

Groups shall be subject to the provisions of Subchapter V of Chapter 23 of Title 19 for the payment of fees and assessments.

§414. Misrepresentation Prohibited.

No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of membership of a group nor violate any provision of Chapters 17 and 23 of this title or any regulations thereunder.

§415. Investments.

Funds not needed for current obligations may be invested by the board of trustees in accordance with Chapters 11 and 13 of this title.

§416. Rates and Reporting of Rates.

(a) Every workers' compensation self-insurance group shall file and adhere to rates, rules and classifications pursuant to Chapter 26 of this title.

(b) Premium contributions to the group shall be determined by applying the rates and rules to the appropriate classification of each member which may be adjusted by each member's experience credit or debit. Subject to approval by the Commissioner, premium contributions may also be reduced by an advance premium discount reflecting the group's expense levels and loss experience.

(c) A group may contract with an advisory organization approved by the Commissioner for assistance in developing appropriate rates.

(d) Each group shall be audited at least annually by an auditor acceptable to the Commissioner to verify proper classifications, experience rating, payroll, and rates. A report of the audit shall be filed with the Commissioner in a form acceptable to the Commissioner. A group or any member thereof may request a hearing on any objections to the classifications. If the Commissioner determines that as a result of an improper classification a member's premium contribution is insufficient, he shall order the group to assess that member an amount equal to the deficiency. If the Commissioner determines that as a result of an improper classification a member's premium is excessive, he shall order the group to refund to the member the excess collected. The audit shall be at the expense of the group.

§417. Refunds.

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees not less than twelve months after the end of the fund year with the Commissioner's approval.

(b) Each member shall be given a written description of the refund plan at the time of application for membership. A refund for any fund year shall be paid only to those employers who remain participants in the group for the entire fund year. Payment of a refund based on a previous fund year shall not be contingent on continued membership in the group after that fund year.

§418. Premium Payment; Reserves.

(a) Each group shall establish to the satisfaction of the Commissioner a premium payment plan which shall include:

(1) An initial payment by each member of at least 25% of that member's annual premium before the start of the group's fund year; and

(2) Payment of the balance of each member's annual premium in monthly or quarterly installments.

(b) Each group shall establish and maintain actuarially appropriate loss reserves which shall include reserves for:

(1) Known claims and expenses associated therewith; and

(2) Claims incurred but not reported and expenses associated therewith.

(c) Each group shall establish and maintain bad debt reserves based on the historical experience of the group or other groups.

§419. Deficits and Insolvencies.

(a) If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under this Act, it shall forthwith make up the deficiency or levy an assessment upon its members for the amount needed to make up the deficiency.

(b) In the event of a deficiency in any fund year, the deficiency shall be made up immediately, either from:

- (1) Surplus from a fund year other than the current fund year;
- (2) Administrative funds;
- (3) Assessment of the membership, if ordered by the group; or
- (4) Such alternate method as the Commissioner may approve or direct.

The Commissioner shall be notified prior to any transfer of surplus funds from one fund year to another.

(c) If the group fails to assess its members or to otherwise make up such deficit within 30 days, the Commissioner may order it to do so.

(d) If the group fails to make the required assessment of its members within 30 days after the Commissioner orders it do so, or if the deficiency is not fully made up within 60 days after the date on which the assessment is made, or within such longer period of time as may be specified by the Commissioner, the group shall be deemed to be insolvent or impaired.

(e) Notwithstanding the above (a) through (d), The Commissioner may at any time proceed against an insolvent group in the same manner as the Commissioner would proceed against an insolvent or impaired domestic insurer in this State as prescribed in Chapter 59 of this title. The Commissioner shall have the same powers and limitations in such proceedings as are provided under those laws.

(f) In the event of delinquency proceedings against a group, the Commissioner may levy an assessment upon its members for such an amount as the Commissioner determines to be necessary to discharge all liabilities of the group, including the reasonable cost of liquidation or rehabilitation.

§420. Guaranty Mechanism.

In the event of a liquidation pursuant to §419, after exhausting the security required pursuant to §404(b)(2), the Commissioner may levy an assessment against all groups to assure prompt payment of benefits. The assessment on each group shall be based on the proportion that the premium of each group bears to the total premium of all groups. The Commissioner may exempt a group from assessment upon finding that the payment of the assessment would render the group insolvent. The assessment shall not relieve any member of an insolvent group of its joint and several liability. After an assessment is made, the Commissioner shall take action to enforce the joint and several liability provisions of the insolvent group's indemnity agreement, and shall recoup:

(1) All costs incurred by the Commissioner in enforcing such joint and several liability provisions;

(2) Amounts that the Commissioner assessed any other groups pursuant to this section; and

(3) Any obligations included within §419(f) of this chapter.

## §421. Monetary Penalties.

After notice and opportunity for a hearing, the Commissioner may impose a monetary penalty on any person or group found to be in violation of any provision of this chapter or title or of any rules or regulations pursuant to Section 329 of this title and Chapter 101 of Title 29. The amount of any monetary penalty shall be paid to the Commissioner for the use of the State.

## §422. Cease and Desist Orders.

(a) After notice and opportunity for a hearing, unless there are exigent circumstances, the Commissioner may issue an order requiring a person or group to cease and desist from engaging in an act or practice found to be in violation of any provision of this chapter or title or of any rules or regulations promulgated thereunder. Unless there are exigent circumstances, a minimum of 10 days notice will be provided prior to a hearing. If exigent circumstances are present, the person or group will be offered a hearing within 10 days after the issuance of the order.

(b) Upon a finding, after notice and opportunity for a hearing, that any person or group has violated any cease and desist order, the Commissioner may do any or all of the following:

(1) Impose a monetary penalty of not more than \$15,000 in the case of an individual or not more than \$50,000 in the case of a group or corporation for each and every act or violation of the order; or

(2) Revoke or suspend the group's certificate of authority or any insurance license held by the person, or

(3) Place the group or person under supervision; or

(4) Permanently enjoin the conduct or enter any remedial order.

## §423. Revocation of Certificate of Authority.

(a) After notice and opportunity for a hearing, the Commissioner may revoke or suspend a group's certificate of authority if it:

(1) Is found to be insolvent or impaired;

(2) Fails to pay any premium tax, regulatory fee or assessment, or special fund contribution imposed upon it; or

(3) Fails to comply with any of the provisions of this chapter and title or with any rules promulgated thereunder, or with any lawful order of the Commissioner within the time prescribed.

(b) In addition, the Commissioner may revoke or suspend a group's certificate of authority if, after notice and opportunity for hearing, the Commissioner finds that:

(1) Any certificate of authority that was issued to the group was obtained by fraud.

(2) There was a material misrepresentation in the application for the certificate of authority; or

(3) The group or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the group or its administrator in its fiduciary capacities.

## §424. Notice and Hearings.

All notices and hearings shall be as provided in Chapter 3 of this title and Chapter 101 of Title 29.

§425. Rules and Regulations.

The Commissioner shall have power to make rules and regulations in order to implement this chapter."

Section 2. Severability Clause. If any provision of this chapter, or the application thereof to any person or circumstance, is subsequently held to be invalid, such invalidity shall not affect other provisions or applications of this chapter."

Approved July 18, 1996

CHAPTER 541

FORMERLY

HOUSE BILL NO. 167  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 59 OF TITLE 29 OF THE DELAWARE CODE RELATING TO THE MERIT SYSTEM OF PERSONNEL ADMINISTRATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 5931, Chapter 59, Title 29 of the Delaware Code by designating the existing section as subsection "(a)" and by adding a new subsection (b) to read as follows:

"(b) Should the plan required by subsection (a) of this Section provide for various stages, phases or steps to be followed, the failure of the employing Department or Agency to respond or consider the grievance or complaint within the time required by the rules shall automatically result in the grievance or complaint moving to the next stage, phase or step unless the delay results from an agreement in writing between the employing Department or Agency and the employee who filed the grievance or complaint, or the employee has indicated in writing to the personnel office of the Department or Agency his or her opposition to the automatic movement to the next stage, phase or step."

Approved July 18, 1996

CHAPTER 542

FORMERLY

HOUSE BILL NO. 421  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 23, TITLE 19 OF THE DELAWARE CODE RELATING TO WORKERS' COMPENSATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2354 of Chapter 23, Title 19 of the Delaware Code by designating the existing Section as paragraph "(a)".

Section 2. Further amend §2354 of Chapter 23, Title 19 of the Delaware Code by adding a new paragraph designated as paragraph (b) as follows:

"(b) Whenever a petition to determine benefits is pending and one of two or more employers or two or more insurance carriers shall be liable for undisputed benefits arising under §2322 or §2324 of this chapter, the employer or insurance carrier which paid benefits for the first occurrence shall pay all interim benefits arising under §2322 of this chapter and temporary total disability benefits at the lower rate which may be applicable under § 2324 of this chapter without a hearing. When the claim is resolved thereafter by agreement or by award after a hearing, the responsible party shall indemnify the payor for benefits paid."

Approved July 18, 1996

## §421. Monetary Penalties.

After notice and opportunity for a hearing, the Commissioner may impose a monetary penalty on any person or group found to be in violation of any provision of this chapter or title or of any rules or regulations pursuant to Section 329 of this title and Chapter 101 of Title 29. The amount of any monetary penalty shall be paid to the Commissioner for the use of the State.

## §422. Cease and Desist Orders.

(a) After notice and opportunity for a hearing, unless there are exigent circumstances, the Commissioner may issue an order requiring a person or group to cease and desist from engaging in an act or practice found to be in violation of any provision of this chapter or title or of any rules or regulations promulgated thereunder. Unless there are exigent circumstances, a minimum of 10 days notice will be provided prior to a hearing. If exigent circumstances are present, the person or group will be offered a hearing within 10 days after the issuance of the order.

(b) Upon a finding, after notice and opportunity for a hearing, that any person or group has violated any cease and desist order, the Commissioner may do any or all of the following:

(1) Impose a monetary penalty of not more than \$15,000 in the case of an individual or not more than \$50,000 in the case of a group or corporation for each and every act or violation of the order; or

(2) Revoke or suspend the group's certificate of authority or any insurance license held by the person, or

(3) Place the group or person under supervision; or

(4) Permanently enjoin the conduct or enter any remedial order.

## §423. Revocation of Certificate of Authority.

(a) After notice and opportunity for a hearing, the Commissioner may revoke or suspend a group's certificate of authority if it:

(1) Is found to be insolvent or impaired;

(2) Fails to pay any premium tax, regulatory fee or assessment, or special fund contribution imposed upon it; or

(3) Fails to comply with any of the provisions of this chapter and title or with any rules promulgated thereunder, or with any lawful order of the Commissioner within the time prescribed.

(b) In addition, the Commissioner may revoke or suspend a group's certificate of authority if, after notice and opportunity for hearing, the Commissioner finds that:

(1) Any certificate of authority that was issued to the group was obtained by fraud.

(2) There was a material misrepresentation in the application for the certificate of authority; or

(3) The group or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the group or its administrator in its fiduciary capacities.

## §424. Notice and Hearings.

All notices and hearings shall be as provided in Chapter 3 of this title and Chapter 101 of Title 29.

§425. Rules and Regulations.

The Commissioner shall have power to make rules and regulations in order to implement this chapter."

Section 2. Severability Clause. If any provision of this chapter, or the application thereof to any person or circumstance, is subsequently held to be invalid, such invalidity shall not affect other provisions or applications of this chapter."

Approved July 18, 1996

CHAPTER 541

FORMERLY

HOUSE BILL NO. 167  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 59 OF TITLE 29 OF THE DELAWARE CODE RELATING TO THE MERIT SYSTEM OF PERSONNEL ADMINISTRATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 5931, Chapter 59, Title 29 of the Delaware Code by designating the existing section as subsection "(a)" and by adding a new subsection (b) to read as follows:

"(b) Should the plan required by subsection (a) of this Section provide for various stages, phases or steps to be followed, the failure of the employing Department or Agency to respond or consider the grievance or complaint within the time required by the rules shall automatically result in the grievance or complaint moving to the next stage, phase or step unless the delay results from an agreement in writing between the employing Department or Agency and the employee who filed the grievance or complaint, or the employee has indicated in writing to the personnel office of the Department or Agency his or her opposition to the automatic movement to the next stage, phase or step."

Approved July 18, 1996

CHAPTER 542

FORMERLY

HOUSE BILL NO. 421  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 23, TITLE 19 OF THE DELAWARE CODE RELATING TO WORKERS' COMPENSATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2354 of Chapter 23, Title 19 of the Delaware Code by designating the existing Section as paragraph "(a)".

Section 2. Further amend §2354 of Chapter 23, Title 19 of the Delaware Code by adding a new paragraph designated as paragraph (b) as follows:

"(b) Whenever a petition to determine benefits is pending and one of two or more employers or two or more insurance carriers shall be liable for undisputed benefits arising under §2322 or §2324 of this chapter, the employer or insurance carrier which paid benefits for the first occurrence shall pay all interim benefits arising under §2322 of this chapter and temporary total disability benefits at the lower rate which may be applicable under § 2324 of this chapter without a hearing. When the claim is resolved thereafter by agreement or by award after a hearing, the responsible party shall indemnify the payor for benefits paid."

Approved July 18, 1996

## CHAPTER 543

## FORMERLY

HOUSE BILL NO. 401  
AS AMENDED BY HOUSE AMENDMENT NO. 1AN ACT TO AMEND CHAPTER 21, TITLE 25, OF THE DELAWARE CODE RELATING  
TO THE SATISFACTION OF MORTGAGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend subsection (a), § 2111, Chapter 21, Title 25 of the Delaware Code by inserting the phrase "affecting properties in Kent or Sussex Counties" between the words "mortgage" and "is" as they appear in the first sentence of said subsection.

Section 2. Amend § 2111, Chapter 21, Title 25 of the Delaware Code by redesignating the subsections "(b), (c), (d), (e) and (f)", as they appear therein as subsections "(c), (d), (e), (f) and (g)", respectively.

Section 3. Amend subsection (a)(2), § 2111, Chapter 21, Title 25 of the Delaware Code by deleting the words "subsection (b)" as they appear in the first sentence and by inserting in lieu thereof "subsection (c)".

Section 4. Amend § 2111, Chapter 21, Title 25 of the Delaware Code by inserting a new subsection (b) to read as follows:

"(b) Whenever the debt or duty secured by a mortgage or conveyance in the nature of a mortgage affecting properties in New Castle County is satisfied or performed, the legal holder of such mortgage or conveyance at the time the satisfaction or performance is completed shall, forthwith, after satisfaction or performance is completed, cause an entry of such satisfaction or performance to be made upon the record by the procedure enumerated in this subsection. The fee for entering such satisfaction or performance upon the record shall be paid by the debtor or obligor unless the mortgage or conveyance provides otherwise.

(1) A satisfaction of a mortgage or conveyance shall be made by recordation of either a satisfaction piece if the instrument is presented in substantially the same form as set out in subsection (c) of this Section and acknowledged in the same manner as provided by law for the acknowledgment of deeds, or an attorney's affidavit pursuant to § 2120. The satisfaction piece shall be presented to the Recorder, and the Recorder shall accept such document for recordation providing such document conforms to the requirements set out in subsection (c) of this Section.

(2) If a full or partial release of the mortgage or conveyance is recorded, the Recorder of Deeds shall place a reference to a book and page number in the indices as to where the release is recorded."

Section 5. Amend new subsection (c), § 2111, Chapter 21, Title 25 of the Delaware Code by inserting the phrase "and (b)(1)" between the phrase "(a)(2)" and the word "of" as they appear in said subsection.

Section 6. Amend new subsection (c), § 2111, Chapter 21, Title 25 of the Delaware Code by inserting immediately after the word "Address: \_\_\_\_\_" the following:

"Tax Parcel Identification Number: \_\_\_\_\_

Property Address: \_\_\_\_\_".

Section 7. Amend new subsection (d), § 2111, Chapter 21, Title 25 of the Delaware Code by striking said subsection in its entirety and substituting in lieu thereof the following:

“(d) Each Recorder shall either create and maintain a separate index and record of the recording of documents which are authorized to be recorded by this Chapter including, but not limited to, powers of attorney to satisfy mortgages, satisfaction pieces, partial and complete releases of mortgages and security interests or index the same in the index used for recorded mortgages. If the Recorder creates a separate index, it may be called the Release and Satisfaction Index which shall reference the mortgagor, mortgagee, record book and page of the mortgage being released or satisfied, and the address or lot number, if any, of the property being released or satisfied. The Recorder may also maintain a separate record of said instruments and shall not be required to maintain other than a micrographic or electronic record of said instruments.”

Section 8. Amend § 2111(c), Title 25 of the Delaware Code, by inserting, after the text “by subsection (a)” and before the text “of this section”, new text, to read:

“or (b)”

Section 9. the provisions of this Act shall become effective on the later of July 1, 1996 or 90 days after enactment.

Approved July 18, 1996

## CHAPTER 544

## FORMERLY

## HOUSE SUBSTITUTE NO.1

## TO

## HOUSE BILL NO. 461

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE FORMER STATE BOARD OF HEALTH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part I, Title 16 of the Delaware Code by striking the Title to said part I, and substituting in lieu thereof the following:

**"PART I. LOCAL BOARDS OF HEALTH; HEALTH PROGRAMS"**

Section 2. Amend Subchapter II, Chapter 1, Title 16 of the Delaware Code by striking the title to said section, and substituting in lieu thereof the following:

**"§ 122. Powers and Duties of the Department of Health and Social Services"**

Section 3. Amend § 122, Chapter 1, Title 16 of the Delaware Code by striking the second word of said section ("Board") and substituting the words "Department of Health and Social Services" in lieu thereof.

Section 4. Amend §102, Chapter 1, Title 16 of the Delaware Code by striking the word "Board" whenever the same appears in said section, and substituting the word "Division" in lieu thereof.

Section 5. Amend §103, Chapter 1, Title 16 of the Delaware Code by striking the word "Board" whenever the same appears in said section, and substituting the word "Department" in lieu thereof.

Section 6. Amend §104, Chapter 1, Title 16 of the Delaware Code by striking the word "Board" wherever the same appears in said section, and substituting the word "Department" in lieu thereof.

Section 7. Amend §105, Chapter 1, Title 16 of the Delaware Code by striking the word "Board" wherever the same appears in said section, and substituting the word "Department" in lieu thereof.

Section 8. Amend §107, Chapter 1, Title 16 of the Delaware Code by striking the word "Board" as the same appears in said section, and substituting the words "Department of Health and Social Services" in lieu thereof.

Section 9. Amend §121, Subchapter II, Chapter 1, Title 16 of the Delaware Code by striking the word "Board" wherever the same appears in said section, and substituting the word "Department" in lieu thereof.

Section 10. Amend §122, Subchapter II, Chapter 1, Title 16 of the Delaware Code by striking the word "Board" as the same appears in the title and as the second word of said section, and substituting the word "Department" in lieu thereof.

Section 11. Amend §122, Subchapter II, Chapter 1, Title 16 of the Delaware Code by striking the words "By affirmative vote of a majority of the Board, to adopt" as the same appear in subsection (3), and substituting the word "Adopt" in lieu thereof.

Section 12. Amend Subsection (3), Section 122, Chapter 1, Title 16 of the Delaware Code by striking the word "Board" as the same appears in paragraph c., and substituting the word "Department" in lieu thereof.

Section 13. Amend Subsection (3), Section 122, Chapter 1, Title 16 of the Delaware Code by striking the words "State Board of Health" as the same appear twice in paragraph m., and substituting the word "Department" in lieu thereof.

Section 14. Amend Paragraph o, Subsection (3), Section 122, Title 16 of the Delaware Code by striking the words "Board of Health" as the same appear in subparagraph (2), and substituting the word "Department" in lieu thereof.

Section 15. Amend Paragraph o, Subsection (3), Section 122, Title 16 of the Delaware Code by striking the words "Board of Health" and "State Board of Health" as the same appear in sub-paragraph 2, and substituting the word "Department" in lieu thereof.

Section 16. Amend Subsection (3), Section 122, Chapter 1, Title 16 of the Delaware Code by striking the term "State Board of Health" as the same appears three times within the first six sentences of paragraph p., and substituting the word "Department" in lieu thereof.

Section 17. Amend Subsection (3), Section 122, Chapter 1, Title 16 of the Delaware Code by striking the term "the Board" as the same appears three times within the first six sentences of paragraph p., and substituting the words "the Department" in lieu thereof.

Section 18. Amend Paragraph q, Subsection (3), Section 122, Title 16 of the Delaware Code by striking the word "Board" as the same appears twice in sub-paragraph 1, and substituting the word "Department" in lieu thereof.

Section 19. Amend Paragraph q, Subsection (3), Section 122, Title 16 of the Delaware Code by striking the term "State Board of Health" whenever the same appear in sub-paragraph 2, and substituting the word "Department" in lieu thereof.

Section 20. Amend § 122, Chapter 1, Title 16 of the Delaware Code by striking the word "Board" as the same appears twice in the last sentence of said section, and substituting the word "Department" in lieu thereof.

Section 21. Amend § 123, Chapter 1, Title 16 of the Delaware Code by striking the term "State Board of Health" as the same appears in subsection (a), and substituting the word "Department" in lieu thereof.

Section 22. Amend § 123, Chapter 1, Title 16 of the Delaware Code by striking the words "the Board" as the same appears in subsection (b), and substituting the words "the Department" in lieu thereof.

Section 23. Amend § 127, Chapter 1, Title 16 of the Delaware Code by striking the term "State Board of Health" as the same appears in subsection (a), and substituting the words "Department of Health and Social Services" in lieu thereof.

Section 24. Amend § 128, Chapter 1, Title 16 of the Delaware Code by striking the term "State Board" as the same appears in subsection (b), and substituting the word "Department" in lieu thereof.

Section 25. Amend § 129, Chapter 1, Title 16 of the Delaware Code by striking the words "the Board" as the same appear twice in said section, and substituting the words "the Department" in lieu thereof.

Section 26. Amend § 133, Chapter 1, Title 16 of the Delaware Code by striking the term "State Board of Health" as the same appears in subsection (a), and substituting the word "Department" in lieu thereof.

Section 27. Amend §133, Chapter 1, Title 16 of the Delaware Code by striking the words "Department of Health and Public Services" as the same appears three times in subsection (b), and substituting the word "Department of Health and Social Services" in lieu thereof.

Section 28. Amend §134, Chapter 1, Title 16 of the Delaware Code by striking the term "State Board" as the same appears in subsection (c), and substituting the word "Department" in lieu thereof.

Section 29. Amend §134, Chapter 1, Title 16 of the Delaware Code by striking the word "Board" as the same appears in subsections (a) and (b), and substituting the word "Department" in lieu thereof.

Section 30. Amend §134, Chapter 1, Title 16 of the Delaware Code by striking the word "State Board" as the same appears in subsection (c), and substituting the word "Department" in lieu thereof.

Section 31. Amend §135, Chapter 1, Title 16 of the Delaware Code by striking the term "Board" as the same appears in subsection (b), and substituting the word "Division" in lieu thereof.

Section 32. Amend §142, Chapter 1, Title 16 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof the following:

"The pathologist and bacteriologist shall be employed by the Department of Health and Social Services."

Section 33. Amend §155, Chapter 1, Title 16 of the Delaware Code by striking the title to said section, and substituting in lieu thereof the following:

"§155. Accounting of all Funds Received by the Hospital."

Approved July 18, 1996

CHAPTER 545

FORMERLY

HOUSE BILL NO. 563  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 50, TITLE 25 OF THE DELAWARE CODE, RELATING TO LIENS AND ESTATE RECOVERIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 25 of the Delaware Code by striking § 5001(b) in its entirety and by substituting in lieu thereof the following:

“(b) ‘Long-term care’ means a service provided in a long-term care facility or in the home, under federally approved home and community-based services, as an alternative to institutionalization.”

Section 2. Amend § 5001(c) of Title 25 of the Delaware Code by striking the phrase “a long-term services as an alternative to institutionalization.” and by substituting in lieu thereof the phrase “home and community-based services”.

Section 3. Amend § 5002(a) of Title 25 of the Delaware Code by striking the phrase “under facility” and by substituting in lieu thereof the phrase “facility under”.

Section 4. Amend Section 5002(a) of Title 25 of the Delaware Code by deleting the phrase “subsection (b)” and by substituting in lieu thereof the phrase “Subsections (b) and (c).”

Section 5. Amend Section 5002 of Title 25 of the Delaware Code by redesignating Subsections (b) through (d) as Subsections (c) through (e) respectively and by inserting the following new Subsection (b) to read:

“(b) No lien may be imposed on an individual’s home under Subsection (a) of this section if any of the following persons is lawfully residing in the home:

(1) the spouse of the individual;

(2) the individual’s child who is either under the age of 21, blind, or permanently and totally disabled; or

(3) a sibling of the individual who has an equity interest in the home and who was residing in the home for a period of at least one year immediately prior to the date of the individual’s admission to the long-term care facility.”

Section 6. Amend § 5005 of Title 25 of the Delaware Code by inserting the phrase “§ 5003” between the phrases “application of” and “this act”.

Section 7. Amend § 5005 of Title 25 of the Delaware Code by adding the following sentence after the phrase “undue hardship.”:

“However, a waiver granted pursuant to this section shall remain in effect only as long as the undue hardship condition continues.”

Approved July 18, 1996

## CHAPTER 546

## FORMERLY

HOUSE BILL NO. 566  
AS AMENDED BY HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO OPTOMETRY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 21, Title 24 of the Delaware Code by adding a new §2100 which new Section shall read as follows:

"§2100. Objectives.

The primary objective of the Board of Examiners in Optometry, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by this Chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered.

The secondary objectives of the Board are to maintain minimum standards of practitioner competency; and to maintain certain standards in the delivery of services to the public. In meeting its objectives, the Board shall develop standards assuring professional competence; shall monitor complaints brought against practitioners regulated by the Board; shall adjudicate at formal hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against practitioners."

Section 2. Amend subsection (b), §2102, Chapter 21, Title 24 of the Delaware Code by striking the first sentence of said subsection (b), and substituting in lieu thereof the following:

"(b) The Board shall consist of five members appointed by the Governor, who are residents of this state: three therapeutically certified optometrists engaged in the actual practice of optometry and two public members."

Section 3. Amend §2102, Chapter 21, Title 24 of the Delaware Code, by striking the present title of said Section and substituting in lieu thereof the following:

"§2102. Board of Examiners in Optometry; appointment; qualifications; terms of office; vacancies; suspension or removal; unexcused absences; compensation."

Section 4. Amend subsection (b), §2102, Chapter 21, Title 24 of the Delaware Code, by striking the third sentence of current subsection (b).

Section 5. Amend subsection (c), §2102, Chapter 21, Title 24 of the Delaware Code, by striking said subsection and substituting in lieu thereof the following:

"(c) Said public members shall be accessible to inquiries, comments and suggestions from the general public and shall be entitled to full voting privileges on all aspects of all issues which come before the Board including the licensing process."

Section 6. Amend subsection (f), §2102, Chapter 21, Title 24 of the Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof the following:

"(f) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetency or neglect of duty. A member subject to disciplinary hearing shall be disqualified from Board business until the charge is adjudicated or the matter is otherwise concluded. A Board member may appeal any suspension or removal to the Superior Court."

Section 7. Amend subsection (g), §2102, Chapter 21, Title 24 of the Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof the following:

"(g) No member of the Board, while serving on the Board, shall hold elective office in any professional association of optometrists."

Section 8. Amend §2102, Chapter 21, Title 24 of the Delaware Code, by adding a new subsection (h) which shall read as follows:

"(h) The provisions set forth for 'employees' in Chapter 58, Title 29 of the Delaware Code shall apply to all members of the Board, and to all agents appointed or otherwise employed by the Board."

Section 9. Amend §2102, Chapter 21, Title 24 of the Delaware Code, by adding a new subsection (i) which shall read as follows:

"(i) Any member who is absent without adequate reason for three consecutive meetings, or fails to attend at least half of all regular business meetings during any calendar year, shall be guilty of neglect of duty."

Section 10. Amend §2102, Chapter 21, Title 24 of the Delaware Code, by adding a new subsection (j) which shall read as follows:

"(j) Each member of the Board shall be reimbursed for all expenses involved in each meeting, including travel; and in addition shall receive not more than \$50 for each meeting attended but not more than \$500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year."

Section 11. Amend §2103, Chapter 21, Title 24 of the Delaware Code, by striking said Section in its entirety and substituting in lieu thereof the following:

"§2103. ~~Organization; meetings; officers; quorum.~~

(a) The Board shall hold a regularly scheduled business meeting at least once in each year, and at such times as the President deems necessary; or, at the request of a majority of the Board members.

(b) The Board shall elect annually a President and Secretary. Each officer shall serve for one year, and shall not succeed himself or herself for more than two consecutive terms.

(c) A majority of the members shall constitute a quorum for the purpose of transacting business. No disciplinary action shall be taken without the affirmative vote of three members of the Board.

(d) Minutes of all meetings shall be recorded, and copies shall be maintained by the Division of Professional Regulation. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared shall be made. The expense of preparing any transcript shall be incurred by the person requesting it."

Section 12. Amend §2104, Chapter 21, Title 24 of the Delaware Code, by striking said Section in its entirety and by substituting in lieu thereof the following:

"§2104. ~~Powers and Duties.~~

(a) The Board of Examiners in Optometry shall have authority to:

(1) Formulate rules and regulations, with appropriate notice to those affected; all rules and regulations shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act of this State. Each rule or regulation shall implement or clarify a specific section of this Chapter.

(2) Designate the application form to be used by all applicants, and to process all applications.

(3) Designate the written, standardized, national examination, approved by the Division of Professional Regulation, to be taken by all persons applying for licensure; applicants who qualify for licensure by reciprocity shall have achieved a passing score on the designated national examination.

(4) The Board shall adopt the administration, grading procedures, and passing score set by the national Board, or of a comparable alternative national or regional examination, if a national examination is not available.

(5) Establish minimum education, training, and experience requirements for licensure as optometrists.

(6) Evaluate the credentials of all persons applying for a licensure to practice optometry in Delaware in order to determine whether such persons meet the qualifications for licensing set forth in this Chapter.

(7) Grant licenses to, and renew licenses of, all persons who meet the qualifications for licensure and/or renewal of licenses.

(8) Establish by rule and regulation continuing education standards required for license renewal.

(9) Evaluate certified records to determine whether an applicant for licensure, who has been previously licensed, certified, or registered in another jurisdiction to practice optometry, has engaged in any act or offense that would be grounds for disciplinary action under this Chapter and whether there are disciplinary proceedings or unresolved complaints pending against such applicants for such acts or offenses.

(10) Refer all complaints from licensees and the public concerning licensed optometrists, or concerning practices of the Board or of the profession, to the Division of Professional Regulation for investigation pursuant to §8810 of Title 29 of the Delaware Code, and, assign a member of the Board to assist the Division in an advisory capacity with the investigation of the technical aspects of the complaint;

(11) Conduct hearings and issue orders in accordance with procedures established pursuant to this Chapter, Chapter 101 of Title 29 of the Delaware Code, and §8810 of Title 29 of the Delaware Code. Where such provisions conflict with the provisions of this Chapter, this Chapter shall govern. The Board shall determine whether or not an optometrist shall be subject to a disciplinary hearing, and if so, shall conduct such hearing in accordance with this Chapter and the Administrative Procedures Act.

(12) Where it has been determined after a disciplinary hearing, that penalties or sanctions should be imposed, to designate and impose the appropriate sanction or penalty after time for appeal has lapsed."

Section 13. Amend §2105, Chapter 21, Title 24 of the Delaware Code, by striking said Section in its entirety and by substituting in lieu thereof the following:

"§2105. Fees.

The amount to be charged for each fee imposed under this Chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this Chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year, the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Boards fees for the coming year."

Section 14. Amend §2106, Chapter 21, Title 24 of the Delaware Code, by striking said Section and substituting in lieu thereof the following:

"§2106. License required.

(a) No person shall engage in the practice of optometry or hold himself or herself out to the public in this State as being qualified to practice optometry; or use in connection with his or her name, or otherwise assume or use, any title or description conveying or tending to convey the impression that he or she is qualified to practice optometry, unless such person has been duly licensed under this Chapter.

(b) Whenever a license to practice as an optometrist in this State has expired or been suspended or revoked, it shall be unlawful for the person to practice optometry in this State.

Section 15. Amend §2107, Chapter 21, Title 24 of the Delaware Code, by striking said Section in its entirety and substituting in lieu thereof the following:

"§2107. Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as an optometrist under this Chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person.

(1) has received a degree of 'Doctor of Optometry' from a legally incorporated and accredited optometric college or school which has been approved by the appropriate accrediting body of the American Optometric Association.

(2) has achieved the passing score on a nationally recognized, written, standardized examination in optometry, approved by the Division of Professional Regulation; in addition all applicants must pass a nationally recognized standardized test on diagnosis, treatment and management of ocular disease approved by the Division.

(3) has completed a six-month internship in optometry, which shall be approved by the Board; the Board shall waive the internship when the applicant meets the requirements of §2109 of this Title.

(4) has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this Chapter; and has no disciplinary proceedings or unresolved complaints pending against him or her in any jurisdiction where the applicant has previously been or currently is licensed as an optometrist.

(5) possesses current cardio-pulmonary resuscitation (CPR) certification for adults and children.

(b) Where the Board has found to its satisfaction that an applicant has been intentionally fraudulent, or that false information has been intentionally supplied, it shall report its findings to the Attorney General for further action.

(c) Where the application of a person has been refused or rejected and such applicant feels that the Board has acted without justification; has imposed higher or different standards for him or her than for other applicants or licensees; or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

Section 16. Amend §2109, Chapter 21, Title 24 of the Delaware Code, by striking said Section in its entirety and substituting in lieu thereof the following:

"§2109. Reciprocity.

The Board shall waive the internship requirement for an applicant holding a valid license to practice optometry, issued by another jurisdiction, and who has practiced for a minimum of five years in such other jurisdiction with standards of licensure which are equal to or greater than those of this Chapter, and grant a license by reciprocity to such applicant. The applicant shall contact the National Practitioner Data Bank requesting that verification be sent to the Board regarding his or her licensure status. In addition, the applicant shall contact each jurisdiction where he or she currently is licensed, or has been previously licensed, or otherwise authorized to practice optometry, and request that a certified statement be provided to the Board stating

whether or not there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event there is a disciplinary proceeding or unresolved complaint pending, the applicant shall not be licensed until the proceeding or complaint has been resolved.

Applicants from jurisdictions, which have the same basic qualifications for licensure as this State, but that do not have essentially comparable or higher standards to qualify for 'therapeutic' licensing, shall be required to meet the conditions of subsections (c) and (d), §2108 of this Title."

Section 17. Amend §2110, Chapter 21, Title 24 of the Delaware Code, by striking the present title of said Section and substituting in lieu thereof the following:

"§2110. Internship requirements; temporary licenses."

Section 18. Amend §2110, Chapter 21, Title 24 of the Delaware Code, by striking the words "that is approved by the State Board" as the same appear in the second paragraph of said Section, and by substituting in lieu thereof the following: "that is approved by the Division of Professional Regulation".

Section 19. Amend §2110, Chapter 21, Title 24 of the Delaware Code, by striking in its entirety the third paragraph of said §2110 beginning with the words "The Board shall waive" and ending with the words "those of this State."

Section 20. Amend §2112, Chapter 21, Title 24 of the Delaware Code, by striking said Section in its entirety and by substituting in lieu thereof the following:

"§2112. Issuance and renewal of licenses.

The Board shall issue a license to each applicant who meets the requirements of this Chapter for licensure as an optometrist and who pays the fee established under §2105 of this Title.

Each license shall be renewed biennially, in such manner as is determined by the Division of Professional Regulation, and upon payment of the appropriate fee and submission of a renewal form provided by the Division of Professional Regulation, and proof that the licensee has met the continuing education requirements established by the Board.

The Board, in its rules and regulations, shall determine the period of time within which a licensed optometrist may still renew his or her license, notwithstanding the fact that such licensee has failed to renew on or before the renewal date."

Section 21. Amend §2113, Chapter 21, Title 24 of the Delaware Code, by striking said Section in its entirety and by substituting in lieu thereof the following:

"§2113. Grounds for refusal, revocation or suspension of licenses.

(a) A practitioner licensed under this Chapter shall be subject to disciplinary actions set forth in §2114 of this Chapter, if, after a hearing, the Board finds that the optometrist:

(1) has practiced in a merchandising store;

(2) has practiced in an office not exclusively devoted to the practice of optometry or other health care profession, where material or merchandise is displayed pertaining to a business or commercial undertaking not bearing any relation to the practice of optometry or other health care profession; or practicing in a store or office which does not conform to that used by the majority of professional optometrists in the area;

(3) has continued in the employ of, or acted as an assistant to, any person, firm, corporation, either directly or indirectly, after he or she has knowledge that such person, firm or corporation is violating the laws of Delaware concerning the practice of optometry;

(4) has solicited in person or through an agent or agents for the purpose of selling ophthalmic materials or optometric services which involves any form of kickback arrangement or where financial remuneration, or payment in kind, is made to a non-practitioner to induce referral business from that non-practitioner;

(5) has caused or permitted the use of his or her name, profession, or professional title by or in conjunction with any association, company, corporation or unlicensed person, in any advertising of any manner, unless in conjunction with a vision service plan approved by the Board;

(6) has practiced for or in conjunction with, either directly or indirectly, a corporation or company, except that allowed under Chapter 6 of Title 8 of the Delaware Code; provided that the foregoing shall not prevent a person licensed pursuant to this Chapter from rendering optometric services at a nonprofit clinic which is operated by a corporation or company that is affiliated with a hospital licensed by the Department of Health and Social Services and accredited by the Joint Commission on Accreditation of Health Organizations (JCAH) or the American Osteopathic Association;

(7) has employed or knowingly cooperated in fraud or material deception in order to acquire a license as an optometrist; has impersonated another person holding a license or allowed another person to use his or her license, or aided or abetted a person not licensed as an optometrist to represent himself or herself as an optometrist;

(8) has been convicted of a felony or a crime involving the violation of a patient's trust; a copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefor;

(9) has excessively used or abused drugs (including alcohol, narcotics, or chemicals);

(10) has engaged in an act of consumer fraud or deception; engaged in the restraint of competition; or participated in price-fixing activities;

(11) has had his or her license, certification, or registration, as an optometrist suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute one or more of the acts defined in this Chapter. Every person licensed as an optometrist in this State shall be deemed to have given consent to the release of this information by the Board of Examiners in Optometry, or other comparable agencies in another jurisdiction, and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(12) has failed to notify the Board that his or her license, certification, or registration as an optometrist in another state has been subject to discipline, or has been surrendered, suspended, or revoked. A certified copy of the record of disciplinary action, surrender, suspension, or revocation shall be conclusive evidence thereof.

(b) Where a practitioner fails to comply with the Board's request that he or she attend a hearing, the Board may petition the Superior Court to order such attendance, and the said Court or any judge assigned thereto shall have the jurisdiction to issue such order.

(c) Subject to the provisions of this Chapter and Chapter 101, Title 29 of the Delaware Code, no license shall be restricted, suspended or revoked by the Board, and no practitioner's right to practice optometry shall be limited by the Board until such practitioner has been given notice, and an opportunity to be heard, in accordance with the Administrative Procedures Act."

Section 22. Amend §2114, Chapter 21, Title 24 of the Delaware Code, by striking said Section in its entirety and substituting in lieu thereof the following:

"§2114. Complaints.

All complaints shall be received and investigated by the Division of Professional Regulation in accordance with §8810, Title 29 of the Delaware Code; and the Division shall be responsible for issuing a final written report at the conclusion of its investigation.

When it is determined that an individual is engaging in the practice of optometry or is using the title 'optometrist' and is not licensed under the laws of this State, the Board shall apply to the Office of the Attorney General to issue a cease and desist order after formally warning the unlicensed practitioner in accordance with the provisions of this Chapter.

Any complaints involving allegations of unprofessional conduct or incompetence shall be investigated by the Division of Professional Regulation."

Section 23. Amend §2115, Chapter 21, Title 24 of the Delaware Code, by striking said Section in its entirety and substituting in lieu thereof the following:

"§2115. Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that one of the conditions or violations set forth in §2113 of this Title applies to a practitioner regulated by this Chapter:

- (1) Issue a letter of reprimand;
- (2) Publicly censure a practitioner;
- (3) Place a practitioner on probationary status, and require the practitioner to:
  - a. report regularly to the Board upon the matters which are the basis of the probation;
  - b. limit all practice and professional activities to those areas prescribed by the Board;
- (4) Suspend any practitioner's license;
- (5) Revoke any practitioner's license;
- (6) Impose a monetary penalty not to exceed \$500 for each violation in addition to suspension or revocation of a license.

(b) The Board may withdraw or reduce conditions of probation when it finds that the deficiencies which required such action have been remedied.

(c) The Board may temporarily suspend a practitioner's license in advance of a final adjudication, during the appeals process, but only in cases where there is clear and immediate danger to the health and safety and welfare of the public if the licensee is allowed to continue to practice. Such suspension may be appealed to Superior Court.

(d) Where a license has been suspended due to a disability of the licensee, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee is able to practice with reasonable skill and safety.

(e) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may impose such disciplinary or corrective measures as are authorized under this Chapter."

Section 24. Amend §2116, Chapter 21, Title 24 of the Delaware Code, by striking the words "any ophthalmic assistant, nationally registered as a contact lens technician," as the same appear in said Section, and by substituting in lieu thereof the following. "a nationally registered contact lens technician."

Section 25. Amend §2116, Chapter 21, Title 24 of the Delaware Code, by striking the words "said ophthalmic assistant's" as the same appear in said Section, and by substituting in lieu thereof the following: "said contact lens technician's".

Section 26. Amend §2117, Chapter 21, Title 24 of the Delaware Code, by striking the words "ocular practitioners" as the same appear in said Section, and by substituting in lieu thereof the following: "optometrists and ophthalmologists".

Section 27. Amend §2118, Chapter 21, Title 24 of the Delaware Code, by striking said Section in its entirety and by substituting in lieu thereof the following:

"§2118. Penalty.

A person not currently licensed as an optometrist under this Chapter, when guilty of engaging in the practice of optometry, or using in connection with his or her name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that he or she is qualified to practice optometry, shall be guilty of a misdemeanor. Upon the first offense, he or she shall be fined not less than \$100.00 dollars nor more than \$500.00 dollars for each offense; and, in addition, may be imprisoned for not more than one year. For a second or subsequent conviction, the fine shall be not less than \$500.00 nor more than \$1,000.00 for each offense. Superior Court shall have jurisdiction over all violations of this Chapter."

Section 28. Amend §2119, Chapter 21, Title 24 of the Delaware Code, by striking the present title and by substituting the following new title and wording in lieu thereof:

"§2119. Continuing education requirements.

(a) Each optometrist licensed in this State shall be required to submit proof, acceptable to the Board, that he or she has completed 12 hours of optometric education, or such other scientific educational lectures, symposiums or courses, during each biennial license renewal period.

(b) Optometrists who are authorized to use and prescribe therapeutic pharmaceutical agents shall be required to attend 12 additional hours of courses in ocular pharmacology, diagnosis, or treatment of ocular disease, approved by the Board in each biennial license renewal period. All therapeutically certified optometrists must submit to the Board a copy of current cardio-pulmonary resuscitation (CPR) certification.

(c) The Board shall publish in its rules and regulations the guidelines governing acceptable continuing education requirements.

(d) In the event that any optometrist licensed in this State fails to meet continuing education requirements, his or license shall be revoked, except when proven hardship makes compliance impossible. The Board shall reinstate such license upon presentation of satisfactory evidence of successful completion of continuing education requirements and upon payment of all fees due."

Section 29. Amend §§2116 and 2117, Chapter 21, Title 24 of the Delaware Code, by redesignating present §§2116 and 2117 as new §2118 and §2119, and by redesignating each succeeding Section accordingly.

Section 30. Amend Chapter 21, Title 24 of the Delaware Code, by adding thereto the following new Sections which shall read as follows:

"§2116. Hearing Procedures.

(a) If a complaint is filed with the Board pursuant to §8810, Title 29 of the Delaware Code, alleging violation of §2115 of this Chapter, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, Chapter 101, Title 29 of the Delaware Code.

(b) All hearings shall be informal without use of rules of evidence. If the Board finds, by a majority vote of all members, that the complaint has merit, the Board shall take such action

permitted under this Chapter as it deems necessary. The Board's decision shall be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

(c) Where the practitioner is in disagreement with the action of the Board, he or she may appeal the Board's decision to the Superior Court within 30 days of service, or of the postmarked date of the copy of the decision mailed to him or her. Upon such appeal the Court shall hear the evidence on the record. Stays shall be granted in accordance with §10144, Title 29 of the Delaware Code.

§2117. Reinstatement of a suspended license; removal from probationary status; replacement of license.

(a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee or registrant has taken the prescribed corrective actions and otherwise satisfied all of the conditions of the suspension and/or the probation.

(b) Where a license has been suspended due to the licensee's inability to practice pursuant to this Chapter, the Board may reinstate such license, if, after a hearing, the Board is satisfied that the licensee is again able to perform the essential functions of an optometrist, with or without reasonable accommodations; and/or, there is no longer a significant risk of substantial harm to the health and safety of the individual or others.

(c) Applicants for reinstatement must pay the appropriate fees and submit documentation required by the Board as evidence that all the conditions of a suspension and/or probation have been met. Proof that the applicant has met the continuing education requirements of this Chapter may also be required, as appropriate.

(d) A new license to replace any license lost, destroyed or mutilated may be issued subject to the rules of the Board. A charge shall be made for such issuance."

Section 31. Rules and Regulations.

Rules and Regulations in effect on the date of enactment of this Act shall remain valid to the extent they are not inconsistent with this Act.

Section 32. Severability.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act, which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

Section 33. Amend subsections (a), (b) and (e), §2108, Title 24 of the Delaware Code by striking said subsections in their entirety.

Section 34. Amend subsection (d), §2108, Title 24 of the Delaware Code by striking the words "In addition to the requirements set forth in subsections (b) and (c) of this section, each" as the same appear in said subsection and substituting the word "Each" in lieu thereof.

Section 35. Amend §2108, Title 24 of the Delaware Code by renumbering current subsections (c) and (d) and new subsections (a) and (b).

Section 36. Amend §2110, Title 24 of the Delaware Code by striking the first paragraph of said Section and substituting in lieu thereof the following: "Every applicant, except those applicants who qualify for licensure by reciprocity, shall be required to complete a Board-approved six-month internship in optometry. The internship shall be completed after the applicant has passed all parts of the national, written, standardized examination in optometry, which is approved by the Division, including the examination on the treatment, management of ocular disease (TMOD), approved by the Division."

Section 37. Amend §2111, Title 24 of the Delaware Code by striking the words "receive and endorsement" as the same appear in said Section, and by substituting the words "receive an endorsement" in lieu thereof.

Approved July 18, 1996

## CHAPTER 547

## FORMERLY

HOUSE BILL NO. 584  
AS AMENDED BY HOUSE AMENDMENT NO. 1AN ACT TO AMEND TITLE 18 RELATING TO THE DELAWARE LIFE AND HEALTH  
INSURANCE GUARANTY ASSOCIATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 4405 (a), Chapter 44, Title 18 of the Delaware Insurance Code by striking the phrase "any of the three;" and by substituting in lieu thereof the phrase, "either of the two".

Section 2. Amend Section 4406 (a), Chapter 44, Title 18 of the Delaware Insurance Code by striking said subsection (a) in its entirety, and by substituting in lieu thereof the following

"(a) There is created a non-profit legal entity to be known as the Delaware Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the Association as a condition of their authority to transact insurance in this state. The Association shall perform its functions under the plan of operation established and approved under §4410 of this Title, and shall exercise its powers through a Board of Directors established under §4407 of this Title. For purposes of administration and assessment, the Association shall maintain two (2) accounts:

(1) The life insurance and annuity account, which includes the following subaccounts:

- (a) the life insurance account,
- (b) the annuity account, which shall include contracts issued under a governmental retirement plan established under Section 401, 403 (b), or 457 of the United States Internal Revenue Code; and
- (c) the unallocated annuity account.

(2) The health insurance account."

Section 3. Amend Section 4409(e)(3), Chapter 44, Title 18 of the Delaware Insurance Code by striking said paragraph (3) in its entirety, and substituting in lieu thereof the following:

(3) Class C assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three (3) most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received in this state for such calendar years by all assessed member insurers."

Section 4. Amend Section 4409(e), Chapter 44, Title 18 of the Delaware Insurance Code by striking said subsection (e) in its entirety, and by substituting in lieu thereof the following:

"(e)(1) The total of all assessments upon a member insurer for the life and annuity account and for each subaccount thereunder shall not in any one calendar year exceed two percent (2%); and for the health account shall not in any one calendar year exceed two percent (2%) of the insurers' average premiums

received in this state on the policies and contracts covered by the account during three (3) calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

(2) The Board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or to more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(3) If a one percent (1%) assessment for any subaccount of the life and annuity account in any one year does not provide an amount sufficient to carry out the responsibilities of the Association, then pursuant to paragraph (c)(3) of this section, the Board shall assess all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in paragraph (c)(1) above."

Section 5. Amend Section 4411(3), Chapter 44, Title 18, of the Delaware Insurance Code, by adding the following new sentences at the end of the first sentence of said subsection (3) to read as follows: "If a member is appealing an assessment, the amount assessed shall be paid to the Association and shall be available to meet Association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or in excess shall be returned to the member company."

Section 6. If any provision of this Act, or the application thereof, to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to that end the provisions of this Act shall be declared to be severable.

Approved July 18, 1996

## CHAPTER 548

## FORMERLY

## SENATE SUBSTITUTE NO. 1

## FOR

## SENATE BILL NO. 332

## AN ACT TO AMEND CHAPTER 38, TITLE 12 OF THE DELAWARE CODE RELATING TO BUSINESS TRUSTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §3801(a), Title 12 of the Delaware Code by deleting the words "trust instrument" in clause (i) thereof and substituting in lieu thereof the words "governing instrument".

Section 2. Amend §3801(f), Title 12 of the Delaware Code by deleting the word "and" as it appears at the end of paragraph (1) thereof; by deleting the "." as it appears at the end of paragraph (2) thereof and substituting in lieu thereof "; and"; and by adding a new paragraph (3) to read as follows:

"(3) may contain any provision that is not inconsistent with law or with the information contained in the certificate of trust."

Section 3. Amend §3803, Title 12 of the Delaware Code by adding a new subsection (d) thereto to read as follows:

"(d) No obligation of a beneficial owner or trustee of a business trust to the business trust arising under the governing instrument or a separate agreement in writing, and no note, instrument or other writing evidencing any such obligation of a beneficial owner or trustee, shall be subject to the defense of usury, and no beneficial owner or trustee shall interpose the defense of usury with respect to any such obligation in any action."

Section 4. Amend §3804(g), Title 12 of the Delaware Code by adding a new sentence thereto to read as follows:

"The Court of Chancery shall have jurisdiction over business trusts to the same extent as it has jurisdiction over common law trusts formed under the laws of the State of Delaware."

Section 5. Amend §3808, Title 12 of the Delaware Code by adding new subsections (c) through (e) thereto to read as follows:

"(c) In the event that a business trust does not have perpetual existence, a business trust is dissolved and its affairs shall be wound up at the time or upon the happening of events specified in the governing instrument.

(d) Upon dissolution of a business trust and until the filing of a certificate of cancellation as provided in §3810 of this Chapter, the persons who under the governing instrument of the business trust are responsible for winding up the business trust's affairs may, in the name of, and for and on behalf of, the business trust, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the business trust business, dispose of and convey the business trust property, discharge or make reasonable provision for the business trust liabilities, and distribute to the beneficial owners any remaining assets of the business trust.

(c) A business trust which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to the business trust and all claims and obligations which are known to the business trust but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in the governing instrument of a business trust, any remaining assets shall be distributed to the beneficial owners. Any person, including any trustee, who under the governing instrument of the business trust is responsible for winding up a business trust's affairs who has complied with this subsection shall not be personally liable to the claimants of the dissolved business trust by reason of such person's actions in winding up the business trust."

Section 6. Amend §3810(a), Title 12 of the Delaware Code by redesignating paragraph "(2)" thereof as paragraph "(3)" thereof and by adding a new paragraph (2) to read as follows:

"(2) A business trust is formed at the time of the filing of the initial certificate of trust in the Office of the Secretary of State or at any later date or time specified in the certificate of trust if, in either case, there has been substantial compliance with the requirements of this section."

Section 7. Amend §3809, Title 12 of the Delaware Code by deleting the words "for purposes of taxation under Title 30 of this Code" and substituting in lieu thereof the words "for purposes of any tax imposed by this State or any instrumentality, agency or political subdivision of this State."

Section 8. Amend §3810(b)(2), Title 12 of the Delaware Code by striking the first sentence of said subsection in its entirety and substituting in lieu thereof a new sentence to read as follows:

"Except to the extent otherwise provided in the certificate of trust or in the governing instrument of a business trust, a certificate of trust may be amended at any time for any purpose as the trustees may determine."

Section 9. Amend §3810, Title 12 of the Delaware Code by adding new subsections (e) and (f) thereto to read as follows:

"(e) Whenever any certificate authorized to be filed with the Office of the Secretary of State under any provision of this Chapter has been so filed and is an inaccurate record of the action therein referred to, or was defectively or erroneously executed, such certificate may be corrected by filing with the Office of the Secretary of State a certificate of correction of such certificate. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form and shall be executed and filed as required by this Chapter. In lieu of filing a certificate of correction the certificate may be corrected by filing with the Office of the Secretary of State a corrected certificate which shall be executed and filed in accordance with this Chapter. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected, and shall set forth the entire certificate in corrected form. The corrected certificate shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the corrections, and as to those persons the corrected certificate shall be effective from the filing date.

(f) If any certificate filed in accordance with this Chapter provides for a future effective date or time and if the transaction is terminated or amended to change the future effective date or time prior to the future effective date or time, the certificate shall be terminated or amended by the filing, prior to the future

effective date or time set forth in such original certificate, of a certificate of termination or amendment of the original certificate, executed and filed in accordance with this Chapter, which shall identify the original certificate which has been terminated or amended and shall state that the original certificate has been terminated or amended."

Section 10. Amend §3811(a)(2), Title 12 of the Delaware Code by adding after the words "A certificate of amendment" the words ", a certificate of correction, a certificate of termination or amendment, and a restated certificate of trust".

Section 11. Amend §3811(a)(4), Title 12 of the Delaware Code by adding at four places in said subsection immediately following the words "certificate of merger or consolidation", the words "or certificate of termination or amendment of a merger or consolidation".

Section 12. Amend §3811, Title 12 of the Delaware Code by redesignating subsection "(b)" thereof as subsection "(c)" thereof and by adding new subsection (b) thereto, to read as follows:

"(b) Unless otherwise provided in the governing instrument, any person may sign any certificate or amendment thereof or enter into a governing instrument or amendment thereof by any agent, including any attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into a governing instrument or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed in the Office of the Secretary of State, but if in writing, must be retained by the business trust or a trustee or other person authorized to manage the business and affairs of the business trust."

Section 13. Amend §3812, Title 12 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof a new section to read as follows:

"§3812. Filing of Certificate.

(a) Any certificate authorized to be filed with the Office of the Secretary of State under any provision of this Chapter (or any judicial decree of amendment or cancellation) shall be delivered to the Office of the Secretary of State for filing. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law he shall:

(1) Certify that the certificate (or any judicial decree of amendment or cancellation) has been filed in his office by endorsing upon the filed certificate (or judicial decree) the word "filed", and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(2) File and index the endorsed certificate (or judicial decree); and

(3) Prepare and return to the person who filed it or his representative a copy of the filed certificate (or judicial decree), similarly endorsed, and shall certify such copy as a true copy of the filed certificate (or judicial decree).

(b) Upon the filing of a certificate of trust in the Office of the Secretary of State, or upon the future effective date or time of a certificate of trust as provided for therein, the certificate of trust shall be effective. Upon the filing of a certificate of amendment (or judicial decree of amendment), certificate of correction, corrected certificate, or restated certificate in the Office of the Secretary of State, or upon the future effective date or time of a certificate of

amendment (or judicial decree of amendment) or restated certificate as provided for therein, the certificate of trust shall be amended or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof) or a certificate of merger or consolidation which acts as a certificate of cancellation in the Office of the Secretary of State, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof) or a certificate of merger or consolidation which acts as a certificate of cancellation, as provided for therein, the certificate of trust shall be canceled. Upon the filing of a certificate of termination or amendment, the original certificate identified in the certificate of termination or amendment shall be terminated or amended, as the case may be.

(c) A fee as set forth in §3813(a)(2) of this Title shall be paid at the time of the filing of a certificate of trust, a certificate of amendment, a certificate of correction, a corrected certificate, a certificate of termination or amendment, a certificate of cancellation, a certificate of merger or consolidation or a restated certificate.

(d) A fee as set forth in §3813(a)(3) of this Title shall be paid for a certified copy of any certificate on file as provided for by this Chapter, and a fee as set forth in §3813(a)(4) of this Title shall be paid for each page copied.

(e) Any signature on any certificate authorized to be filed with the Secretary of State under any provision of this Chapter may be a facsimile, a conformed signature or an electronically transmitted signature. Any such certificate may be filed by telecopy, fax or similar electronic transmission; provided, however, that the Secretary of State shall have no obligation to accept such filing if such certificate is illegible or otherwise unsuitable for processing.

(f) The fact that a certificate of trust is on file in the Office of the Secretary of State is notice that the entity formed in connection with the filing of the certificate of trust is a business trust formed under the laws of the State of Delaware and is notice of all other facts set forth therein which are required to be set forth in a certificate of trust by §3810(a)(1) and (2) of this Title and is notice of the limitation on liability of a series of a business trust which is permitted to be set forth in a certificate of trust by §3804(a) of this Title."

Section 14. Amend §3813(a)(2), title 12 of the Delaware Code by adding after the word "consolidation", the words "a certificate of correction, a corrected certificate, a certificate of termination or amendment or a restated certificate".

Section 15. Amend §3815, Title 12 of the Delaware Code by adding a new subsection (h) thereto to read as follows:

"(h) A governing instrument or an agreement of merger or consolidation may provide that contractual appraisal rights with respect to a beneficial interest or another interest in a business trust shall be available for any class or group of beneficial owners or beneficial interests in connection with any amendment of a governing instrument, any merger or consolidation in which the business trust is a constituent party to the merger or consolidation, or the sale of all or substantially all of the business trust's assets. The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any such appraisal rights."

Section 16. Amend §§3818, 3819 and 3820, Title 12 of the Delaware Code by redesignating said sections as §§3820, 3821 and 3822 and by adding new §§3818 and 3819 to read as follows:

"§3818. Treasury Interests.

Except to the extent otherwise provided in the governing instrument of a business trust, a business trust may acquire, by purchase, redemption, or otherwise, any beneficial interest in the business trust held by a beneficial owner

of the business trust. Except to the extent otherwise provided in the governing instrument of a business trust, any such interest so acquired by a business trust shall be deemed canceled.

§3819. Access to and Confidentiality of Information; Records.

(a) Except to the extent otherwise provided in the governing instrument of a business trust, each beneficial owner of a business trust has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) as may be established by the trustees, to obtain from the business trust from time to time upon reasonable demand for any purpose reasonably related to the beneficial owner's interest as a beneficial owner of the business trust:

(1) A copy of the governing instrument and certificate of trust and all amendments thereto, together with copies of any written powers of attorney pursuant to which the governing instrument and any certificate and any amendments thereto have been executed;

(2) A current list of the name and last known business, residence or mailing address of each beneficial owner and trustee;

(3) Information regarding the business and financial condition of the business trust; and

(4) Other information regarding the affairs of the business trust as is just and reasonable.

(b) Except to the extent otherwise provided in the governing instrument of a business trust, each trustee shall have the right to examine all the information described in subsection (a) of this section for any purpose reasonably related to his position as a trustee.

(c) Except to the extent otherwise provided in the governing instrument of a business trust, the trustees of a business trust shall have the right to keep confidential from the beneficial owners, for such period of time as the trustees deem reasonable, any information that the trustees reasonably believe to be in the nature of trade secrets or other information the disclosure of which the trustees in good faith believe is not in the best interest of the business trust or could damage the business trust or its business or which the business trust is required by law or by agreement with a third party to keep confidential.

(d) A business trust may maintain its records in other than a written form if such form is capable of conversion into a written form within a reasonable time.

(e) Any demand by a beneficial owner or trustee under this section shall be in writing and shall state the purpose of such demand."

Approved July 18, 1996

CHAPTER 549

FORMERLY

SENATE BILL NO. 384

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO INTERPRETING OF SIGNIFICANT STATE EVENTS FOR THE HEARING IMPAIRED.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 6, Title 29, Delaware code by adding thereto a new section as follows:

"§606. Interpreting of significant State events for the hearing impaired.

The General Assembly, finding that the hearing impaired are an important but often neglected portion of Delaware's citizenry, hereby requests that significant state events be interpreted for the hearing impaired. 'Significant State events' include but are not limited to the following: The Governor's State of the State; the Governor's Budget Address to the General Assembly; and Inaugural Addresses."

Approved July 18, 1996

## CHAPTER 550

## FORMERLY

## SENATE SUBSTITUTE NO.1

## FOR

## SENATE BILL NO. 392

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO MENTAL HEALTH PROCEDURES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. The name of the Delaware State Hospital is changed to the Delaware Psychiatric Center and, after the effective date of this proposed Act, all references throughout the Delaware Code to this facility shall be to the Delaware Psychiatric Center.

Section 2. Amend §5001(1), Chapter 50, Title 16, Delaware Code by deleting the word "either" and by substituting in lieu thereof the word "both."

Section 3. Further amend §5001(1), Chapter 50, Title 16, Delaware Code by deleting the word "or" between "hospitalization," and "(ii)" and by substituting in lieu thereof the word "and."

Section 4. Amend §5001(2), Chapter 50, Title 16, Delaware Code by deleting the words "State Hospital" as they appear in the first sentence and by substituting in lieu thereof the words "Psychiatric Center."

Section 5. Amend §5101(2), Chapter 51, Title 16, Delaware Code by deleting the word "subchapter" and by substituting in lieu thereof the word "chapter."

Section 6. Further amend §5101, Chapter 51, Title 16, Delaware Code by adding thereto a new subsection to read as follows:

"(4) 'Hospital' and 'mental hospital,' as used in this chapter, shall mean the Delaware Psychiatric Center or such other hospital in this State which is certified by the Secretary of the Department of Health and Social Services as being an appropriate facility for the diagnosis, care and treatment of mentally ill persons 18 years of age or older. 'Hospital' and 'mental hospital' shall also mean any hospital in this State which is certified by the Secretary of the Department of Services for Children, Youth and Their Families as being an appropriate facility for the diagnosis, care and treatment of mentally ill persons under 18 years of age."

Section 7. Amend §5109(c), Chapter 51, Title 16, Delaware Code by deleting said subsection in its entirety and by substituting in lieu thereof the following:

"(c) The Secretary shall appoint a Director for the Delaware Psychiatric Center. The Director shall be qualified in the field of mental health and have administrative experience. The Director shall be the chief administrative officer of the Center. The Director shall have all the powers, duties, and functions under this chapter heretofore vested in the Superintendent."

Section 8. Amend the Title of §5122, Chapter 51, Title 16, Delaware Code to add the words "or other hospital" after the words "Delaware State Hospital."

Section 9. Further amend §5122, Chapter 51, Title 16 by adding to subsection (c) the words "or other hospital as defined in §5101(4)" after "Delaware State Hospital" as it appears in the third sentence of that paragraph.

Section 10. Further amend §5122(d) by adding the words "or other hospital as defined in §5101(4)" after "Delaware State Hospital."

Section 11. Amend §5132, Chapter 51, Title 16, Delaware Code by deleting said section in its entirety and by substituting in lieu thereof the following:

"(a) If an inpatient of a State-operated mental hospital escapes, or is on unauthorized leave, its director may issue an order for the patient's immediate rehospitalization. The director or his designee may notify such patient of the existence of a rehospitalization order by any reasonable means of communication open to him. Such an order, irrespective of the patient's actual receipt, shall authorize any peace officer to take the patient into custody for rehospitalization.

(b) If an involuntarily committed inpatient from a non-State-operated hospital certified under §5135 or §5136 of this chapter escapes, or is on unauthorized leave, that hospital's director shall immediately notify the Director of the Division of Alcoholism, Drug Abuse and Mental Health, or his designee, if the patient is 18 years of age or older, or the Division of Child Mental Health Services, if the patient is under 18 years of age. Upon receipt of such notification, the Division Director or his designee may issue notice and a rehospitalization order in conformity with subsection (a). Such an order, irrespective of the patient's actual receipt, shall authorize any peace officer to take the patient into custody for rehospitalization."

Approved July 18, 1996

## CHAPTER 551

## FORMERLY

HOUSE BILL NO. 397  
AS AMENDED BY HOUSE AMENDMENT NO. 1AN ACT TO AMEND SUBCHAPTER VI, CHAPTER 5 OF TITLE 11, DELAWARE CODE,  
RELATING TO CRIMES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Subchapter VI, Chapter 5 of Title 11, Delaware Code by adding a new  
Section 1240 as follows:

§1240 Threats to Public Officials.

(a) Every person who intentionally threatens the life of, or threatens serious physical injury to, any elected public official, prosecutor, public defender, appointee of the Governor to a full-time position, county administrator for Kent or Sussex County or the New Castle County chief administrative officer, or member of the judiciary, with the specific intent that the statement is to be taken as a threat, and the apparent ability to carry out that threat by any means, is guilty of making a threat to a public official. Threat to a public official is a class G. felony.

(b) For purposes of this section, the following definitions shall apply:

(1) "Apparent ability to carry out that threat" includes the ability to fulfill the threat at some future date.

(2) "Threat" means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, provided, however, that the threat must relate directly to the official duties of the elected public official, prosecutor, public defender, appointee of the Governor to a full-time position, or member of the judiciary, in order to constitute a threat to a public official under this section.

(3) For the purposes of this section, the words "member of the judiciary" means a judge or justice of the following courts:

Supreme Court, Chancery Court, Superior Court, Court of Common Pleas, Family Court, Municipal Court or Justice of the Peace Court.

Approved July 18, 1996

## CHAPTER 552

## FORMERLY

HOUSE BILL NO. 413  
AS AMENDED BY HOUSE AMENDMENT NO. 3

AN ACT TO AMEND CHAPTER 69, TITLE 7 OF THE DELAWARE CODE RELATING TO CONSERVATION; AND PROVIDING FOR A UNIFORM CONSERVATION EASEMENT ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 69, Title 7 of the Delaware Code by striking said chapter in its entirety, and substituting in lieu thereof the following:

"CHAPTER 69. CONSERVATION EASEMENTS

§6901. *Definitions*

As used in this Chapter, unless the context otherwise requires:

(1) "Conservation easement" means a non-possessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, fish and wildlife habitat, rare species and natural communities maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) "Holder" means:

(i) a governmental body empowered to hold an interest in real property under the laws of this State or of the United States;

(ii) a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" shall mean a right provided in a conservation easement to enforce any of its terms, and which is granted to a governmental body, charitable corporation, charitable association, or charitable trust which, although eligible to be a holder, is not a holder.

§6902. *Creation, Conveyance, Acceptance and Duration*

(a) Except as otherwise provided in this Chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(b) No right or duty in favor of or against a holder, and no right in favor of a person having a third-party right of enforcement, arises under a conservation easement before its acceptance by the holder and a recordation of that acceptance.

(c) Except as provided in §6903(b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it, unless the owner of the interest is a party to the conservation easement or consents to it.

§6903. Judicial Actions

(a) An action affecting a conservation easement may be brought by:

- (1) an owner of an interest in the real property burdened by the easement;
- (2) a holder of the easement;
- (3) a person having a third-party right of enforcement; or
- (4) a person authorized by other law.

(b) This Chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

§6904. Validity

A conservation easement is valid even though:

- (1) it is not appurtenant to an interest in real property;
- (2) it can be or has been assigned to another holder;
- (3) it is not of a character that has been recognized traditionally at common law;
- (4) it imposes a negative burden;
- (5) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (6) the benefit does not touch or concern real property; or
- (7) there is no privity of estate or of contract.

§6905. Applicability

(a) This Chapter applies to any interest, created after its effective date, which complies with this Chapter, whether or not such interest is designated as a conservation easement, covenant, equitable servitude, restriction, easement, or otherwise.

(b) This Chapter applies to any interest created before its effective date if it would have been enforceable had it been created after its effective date, unless such retroactive application contravenes the constitution or laws of this State or the United States.

(c) This Chapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this State.

Section 2. This Act does not invalidate any interest, whether designated as a conservation easement, preservation easement, covenant, equitable servitude, restriction, or other interest in land which was established under Chapter 69 of Title 7 prior to the effective date of this Act.

Section 3. This Act may be known and referred to as the Uniform Conservation Easement Act.

Approved July 18, 1996

## CHAPTER 553

## FORMERLY

HOUSE BILL NO. 605  
AS AMENDED BY HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO RULES OF THE ROAD, THE IGNITION INTERLOCK DEVICE AND PROGRAM, AND DRIVING UNDER THE INFLUENCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Title 21 of the Delaware Code by striking § 4177F and by inserting in lieu thereof:

"§ 4177F. Ignition Interlock Device Program.

(a) *Application* The Division of Motor Vehicles may offer on a voluntary basis participation in the Ignition Interlock Device Program under this section to eligible persons who submit a written application on the forms designated by the Division.

(b) *Definitions* For the purpose of this section:

(1) 'Ignition Interlock Device' (I I D) or 'approved device' shall mean ignition equipment approved by the Director of the Division of Motor Vehicles pursuant to this section, designed to prevent a motor vehicle from being operated by a person who has consumed alcoholic beverages.

(3) 'Service provider' means a legal entity which the Director of the Division of Motor Vehicles finds complies with the requirements of this section and approves to install I I Ds on participants' motor vehicles.

(4) 'Offender' means a person whose license or driving privileges have been revoked for violating 21 Del. C. § 4177. Notwithstanding any contrary provision of law, a person who elects to apply and is accepted for probation under § 4177B of this chapter shall be an "offender" convicted of an "offense" for the purposes of this section.

(5) 'Participant' means an offender who is eligible to and does participate in the Ignition Interlock Program pursuant to this section.

(6) 'Lockout' means any time a participant attempts to use a motor vehicle equipped with an I I D and any percentage of alcoholic beverages is measured on said device.

(c) *I I D Standards* The Division of Motor Vehicles shall establish the required calibration settings, and shall provide standards for the certification, installation, setting, repair, and removal of the I I Ds.

(d) *Eligibility* An offender who has been convicted of a second or subsequent offense occurring within five years of a prior conviction under any law involving the use, consumption, or possession of alcohol while operating a motor vehicle, or a offender with no prior offense who refuses a chemical test required pursuant to § 2741 of this title, shall be eligible to receive an I I D pursuant to this section if the offender meets the following conditions:

(1) The offender must have had a valid Delaware driver's license at the time of the offense in question;

(2) Following revocation, the offender must complete an alcohol evaluation, satisfactorily complete a course of instruction and/or program of rehabilitation and pay all associated fees;

(3) The offense in question may not involve death or serious physical injury to any person;

(4) The offender's driving privileges or license must not be currently suspended, revoked, denied, or unavailable for any other violations of the law of any jurisdiction;

(5) The offender's driving privileges or license must not be revoked pursuant to 10 Del.C. § 1009 or a like provision of another jurisdiction;

(6) The offender must either own the motor vehicle to be installed with the IID or file the notarized approval of installation by the motor vehicle owner with the Division of Motor Vehicles;

(7) The offender must not have participated in an IID program within the immediate past five years, or a like program in any other jurisdictions;

(8) The offender must provide proof of insurance for the vehicle on which the IID will be installed. The proof of insurance must verify that the offender is permitted to drive the specific motor vehicle in question regardless of ownership of the vehicle;

(9) The court, whether upon a motion by the Attorney General or otherwise, shall not have designated the offender ineligible to be a participant; and

(10) The offender shall meet any other eligibility criteria established by regulations of the Division of Motor Vehicles.

(e) *Installment payment of costs: indigent program.* The Division of Motor Vehicles shall establish a payment plan for participants. The plan shall be administered by the service provider, and the participant shall make all payments under the plan to the service provider. The initial payment shall include the installation cost and two months' lease for a minimum charge and a minimum down payment of \$180. The participant shall thereafter make payments every two months for the lease of the equipment in the amount of \$110 until the balance is paid. The Division may increase the minimum amount by regulation. Any taxes due shall be payable in addition to minimum amounts at the time of each payment.

The Division shall further develop and implement an indigent plan for impoverished persons, which shall be available on a lottery basis. For every 20 devices installed at regular prices, at least one device shall be provided at approximately half price under this program.

"(f) *Program Duration; suspension of sentence.* A participant's license revocation imposed by law shall automatically be suspended upon the participant's entry into the IID program, and shall be suspended for the duration thereof. By entering the program, the participant consents, among the other conditions of the program, to a voluntary period of license revocation, to wit:

(1) If the revocation period suspended is 12 months, the participant's voluntary revocation period is 14 months, and the participant may receive a conditional IID license after 3 months.

(2) If the revocation period suspended is 18 months, the participant's voluntary revocation period is 20 months, and the participant may receive a conditional IID license after 6 months.

(3) If the revocation period suspended is 24 months, the participant's voluntary revocation period is 26 months, and the participant may receive a conditional IID license after 12 months.

The participant shall receive credit towards the voluntary revocation period for the revocation time served prior to entry into the IID program.

(g) *Conditional license, driving record* An offender's driving record maintained by the Division of Motor Vehicles shall indicate any voluntary revocation period to be served under the IID program. The Division of Motor Vehicles shall issue a conditional IID license to an otherwise eligible participant. Each of the conditional IID license, the registration of the vehicle on which the IID is installed, and the participant's driving record maintained by the Division of Motor Vehicles shall indicate that the participant shall not operate any motor vehicle except when equipped with an Ignition Interlock Device.

(h) *Conditions of participation:*

(1) A participant shall be disqualified from further participation in the IID Program for failure to comply with any of the following:

(A) The participant shall abide by the terms of the offender's lease with the service provider as approved by the Division of Motor Vehicles;

(B) The participant shall be driven to the service provider by a licensed driver for installation of the IID;

(C) The participant shall comply with Division of Motor Vehicles regulations concerning conditional IID license restrictions, which may restrict driving other than to school, work, or DUI related programs;

(D) The participant shall not attempt, nor allow or cause an attempt to bypass, tamper with, disable, or remove the IID or its wires in connection;

(E) The participant offender shall not attempt to operate a motor vehicle without possessing registration and a conditional IID license which complies with subsection (g) hereof;

(F) The participant shall not violate any section of this title relating to the use, possession, or consumption of alcohol or intoxicating substances.

(G) The participant shall not fail to pay any and all fines whatsoever assessed during participation in the program pursuant to this title;

(H) The participant shall accumulate no more than 5 points per year;

(I) The offender shall continue to meet all eligibility criteria identified in subsection (d) of this section;

(J) The participant shall provide satisfactory proof to the Division of Motor Vehicles that an approved IID has been installed; and

(K) The participant shall comply with any participation regulations implemented by the Division of Motor Vehicles pursuant to this paragraph.

(2) A participant may be disqualified from further participation in the IID Program for failure to comply with any of the following:

(A) The participant shall not fail or refuse to take random tests at such times and by such means as the Division of Motor Vehicles requires;

(B) The participant shall keep scheduled monitoring appointments with the Division and the service provider; and

(C) The participant shall be required to report to the service provider on a bi-monthly basis for service of the approved IID.

(i) *Disqualification.* The Secretary of the Department of Public Safety, upon 10 days prior notice by certified mail, may disqualify a participant at any time upon a determination by the Secretary that the participant has failed to comply with any of the requirements of subsection (h) of this section. Upon disqualification, the revocation suspended at the time the participant entered the IID program pursuant to subsection (f) of this section shall automatically be reimposed.

(j) *Discharge.* At the time a participant completes the duration of the IID program without disqualification by the Secretary, the revocation suspended at the time the participant entered the IID program shall automatically be discharged."

Section 2. Amend § 4177, Title 21 of the Delaware Code, by adding new text to the end of subsection (e), to read:

"A person who is prohibited from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device under this subsection at the time of an offense under subsection (a) or (b) of this section shall, in addition to any other penalties provided under law, pay a fine of \$2,000 and be imprisoned for sixty days."

Section 3. Amend § 4177E(a), Title 21 of the Delaware Code, by striking each of "and or § 2742" and "and/or § 2743" as they appear therein.

Section 4. *Severability.* If any provision of this Act or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not affect the provisions or application of this Act that can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

Approved July 18, 1996

CHAPTER 554

FORMERLY

HOUSE BILL NO. 617

AN ACT TO AMEND CHAPTER 101 OF TITLE 3 OF THE DELAWARE CODE TO REQUIRE THE THOROUGHbred RACING COMMISSION TO FINGERPRINT ALL LICENSE APPLICANTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 101 of Title 3 of the Delaware Code by deleting the second sentence of § 10128(b) thereof and substituting in lieu thereof the following:

"An individual making application for a license to participate in or be employed at a meet held by a licensee shall be fingerprinted by the Commission or the Commissioner's designee for purposes of a criminal history record check. The individual shall be responsible for all costs related to the fingerprinting and criminal history check "

Approved July 18, 1996

CHAPTER 555

FORMERLY

HOUSE BILL NO. 628

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE AND THE LAWS OF DELAWARE RELATING TO THE LICENSING OF PARTICIPANTS IN THOROUGHbred RACING MEETS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE: (three-fifths of all members elected to each house thereof concurring therein)

Section 1. Amend Subchapter II, Chapter 101, Title 3, Delaware Code by adding thereto a new section 10131 to read as follows:

"§ 10131 License to participate in racing

a) The Commission shall have the power to impose license fees for those participating in a racing meet.

b) The license fees for participants in a racing meet, if imposed by the Commission, shall be payable to the Commission as follows:

- i. \$50.00 for all owners and all trainers.
- ii. \$30.00 for all veterinarians, farriers, jockeys, apprentice jockeys, jockey agents, and assistant trainers
- iii. \$15.00 for all licensee vendors and vendor employees
- iv. \$5.00 for all stable employees and association employees

c) This Act shall be retroactive to January 1, 1996."

Approved July 18, 1996

## CHAPTER 556

## FORMERLY

## HOUSE BILL NO. 652

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE TO GRANT TO THE PUBLIC SERVICE COMMISSION JURISDICTION AND AUTHORITY TO CONDUCT PROCEEDINGS AS PRESCRIBED BY THE FEDERAL TELECOMMUNICATIONS ACT OF 1996 WITHOUT STRICT ADHERENCE TO THE PROCEDURAL REQUIREMENTS SET FORTH IN THE PUBLIC UTILITIES ACT AND THE STATE ADMINISTRATIVE PROCEDURES ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter VII, § 703, Title 26, Delaware Code, by adding to said section a new subsection (4) to read as follows:

"(4) The Commission is authorized and empowered to take such actions, conduct such proceedings (including mediation, arbitration, and review of agreements and statements of terms and conditions), and enter such orders as permitted or required by a 'State commission' under the Telecommunications Act of 1996, Pub. L. 104-104. In exercising such authority and in the conduct of such proceedings, the Commission shall act in accord with the applicable provisions of the Telecommunications Act of 1996 and need not comply with the specific notice, hearing, and other procedural requirements set forth in this Chapter or in Chapter 101 of Title 29 of this Code or regulations heretofore promulgated by the Commission thereunder. The Commission may promulgate rules to govern the conduct of actions and proceedings undertaken to implement the federal law. Such promulgation shall occur pursuant to, and subject to the limitation of, Section 10113(b)(2) of Title 29 of this Code and shall be exempt from the requirements of subchapter III of Chapter 11 of said Title. The foregoing actions and proceedings may be conducted by the Commission or by a subordinate designated for such purpose."

Section 2. This amendment shall be effective upon enactment and shall apply to any proceeding then or thereafter before the Commission arising under the Telecommunications Act of 1996, Pub. L. 104-104.

Approved July 18, 1996

## CHAPTER 557

## FORMERLY

## HOUSE BILL NO. 653

AN ACT TO AMEND CHAPTER 295, VOLUME 65, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF BETHANY BEACH" RELATING TO THE QUALIFICATIONS FOR NON-RESIDENT PROPERTY OWNERS TO HOLD PUBLIC OFFICE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 5.2.2(b), Chapter 295, Volume 65, Laws of Delaware, as amended, by deleting the first sentence thereof and substituting in lieu thereof the following:

"Any person who, on the date of filing of the notice of intention to run (or on the date of his or her appointment to office in the case of a vacancy), is not a resident, but is a freeholder in the town and otherwise qualifies to serve on the Town Council, shall be deemed to be a "non-resident" member of the Town Council."

Approved July 18, 1996

CHAPTER 558

FORMERLY

HOUSE BILL NO. 663

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO TAPROOMS AND TAVERNS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 904(d), Title 4 of the Delaware Code by inserting the phrase "Except as provided in subsection (n) hereafter," before to the word "Whoever" appearing at the beginning of said subsection.

Section 2. Amend Section 904(e), Title 4 of the Delaware Code by inserting the phrase "Except as provided in subsection (n) hereafter," before the word "Whoever" appearing at the beginning of said subsection.

Section 3. Amend Section 904, Title 4 of the Delaware Code by adding a new subsection as follows:

"(n) Nothing in this section shall prohibit or prevent persons under the age of 21 years from entering or remaining in a premises licensed as a tavern or taproom for the purpose of a social event, including, but not limited to, events exclusively for persons under the age of 21 years, provided that the premises licensed as a taproom or tavern is closed for business (including any Sunday); and, provided further, that during any such social event no alcoholic liquor shall be sold, furnished or given to any person at any time before, during or after the social event. All alcoholic liquor must be either removed from the licensed premises or placed under lock and key at all times during the social event and any time before or after the social event when persons under the age of 21 years are present on the licensed premises."

Approved July 18, 1996

## CHAPTER 559

## FORMERLY

HOUSE BILL NO. 572  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 2 AND  
SENATE AMENDMENT NO. 2AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO ALCOHOLIC  
LIQUORS, CIDER, AND TAXES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 101(2), Title 4 of the Delaware Code, by striking the number "4" each time it appears therein, substituting the number "5" in place thereof in each instance.

Section 2. Amend § 101(2), Title 4 of the Delaware Code, by striking the words "and beer" as they appear therein, and by inserting in place thereof the text: "beer, and alcoholic cider".

Section 3. Amend § 101(2), Title 4 of the Delaware Code, by striking the words "or beer" as they appear therein, and by inserting in place thereof the text: "beer, or alcoholic cider".

Section 4. Amend § 101, Title 4 of the Delaware Code, by inserting a new subsection and redesignating the subsequent remaining subsections. The new subsection shall read:

"(8) Without regard to its usual meaning, and by way of limitation, 'Alcoholic Cider' means any fermented beverage made from apples, containing more than one half of 1 percent but not more than seven percent of ethyl alcohol by volume. For purposes of this Title, alcoholic cider shall be treated as within the definition of 'Wine' unless the specific language of a particular section indicates a contrary intent."

Section 5. Amend § 581(a), Title 4 of the Delaware Code, by inserting a new paragraph and redesignating the subsequent remaining paragraphs. The new paragraph shall read:

"(2) For each gallon of alcoholic cider, \$0.16;"

Section 6. Amend § 581(b), Title 4 of the Delaware Code, by inserting new text, after "sacramental wines" and before ", 97 cents", to read:

"or alcoholic cider".

Approved July 18, 1996

CHAPTER 560

FORMERLY

HOUSE BILL NO. 342  
AS AMENDED BY HOUSE AMENDMENT NO. 1  
AND SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 73, TITLE 6, OF THE DELAWARE CODE RELATING TO THE REGULATION OF SECURITIES, BROKER-DEALERS, INVESTMENT ADVISERS AND AGENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 73, Title 6, of the Delaware Code by adding the term "30 days" to Sections 7306(b)(2), 7309(a)(11) and 7323(e) in each location where that term was deleted by Section 13 of 68 Del. Laws, Chapter 181 (effective August 16, 1991).

Section 2. Amend Chapter 73, Title 6, of the Delaware Code by striking subsection 7308(b) in its entirety and by adding in lieu thereof the following:

"(b) The Commissioner may not institute a stop-order proceeding against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next 90 days."

Section 3. Amend Chapter 73, Title 6, of the Delaware Code by striking Subsection 7302(a)(3)e. in its entirety and by adding in lieu thereof the following:

"c. A bank, savings institution or trust company to the extent that these entities are exempt or excluded from broker-dealer registration requirements under federal securities law;"

Section 4. Amend Chapter 73, Title 6, of the Delaware Code by striking Subsection 7316(a)(5) in its entirety and by adding in lieu thereof the following

"(5) Is the subject of a cease and desist order of the Commissioner or of an order of the Commissioner denying, suspending, or revoking registration as a broker-dealer, investment adviser or agent;"

Section 5. Amend Chapter 73, Title 6, of the Delaware Code by striking the third clause of subsection 7302(a)(11)d. (which begins with the words "any act") in its entirety and by adding in lieu thereof the following.

"any act incident to a vote by stockholders (or approval pursuant to section 228 of Title 8) pursuant to the certificate of incorporation, or the provisions of Title 8, on a merger, consolidation, reclassification of securities, dissolution, or sale of corporate assets in consideration of the issuance of securities of the same or another corporation;"

Section 6. Amend Chapter 73, Title 6, of the Delaware Code by adding the following subsection to the end of § 7306:

"(f) The Commissioner may exercise his rule making authority under § 7325(b) to establish special registration procedures for limited offerings. These procedures, including filing requirements and fees, may differ from the qualification procedures set forth above."

Section 7. Amend Chapter 73, Title 6, of the Delaware Code by deleting § 7329 in its entirety and adding in lieu thereof the following:

## "§ 7329. Investor Protection Fund.

(a) All monies as described in subparagraph (b) below shall be credited by the State Treasurer to a fund to be known as the "Investor Protection Fund."

(b) The Investor Protection Fund will be a revolving fund and shall consist of:

(1) Monies transferred to the revolving fund pursuant to court order or judgment, including costs and attorney's fees, in a securities action brought by the Attorney General or the Securities Commissioner pursuant to this chapter; and

(2) Monies received by the Commissioner pursuant to any settlement agreement.

(c) Any fines, costs or other monies (except those obtained as restitution or rescission) received by the Commissioner as a result of an administrative order (other than a consent order) shall be credited to the General Fund.

(d) If, at the end of any fiscal year, the balance in the Investor Protection Fund exceeds \$100,000, the excess shall be withdrawn from the Investor Protection Fund and deposited in the General Fund.

(e) The Attorney General is authorized to expend from the Investor Protection Fund such monies as are necessary for:

(1) The payment of costs, expenses and charges incurred in the preparation, institution and maintenance of administrative and court actions authorized under this chapter;

(2) The payment of costs, expenses and charges incurred in the training and education of Securities Division personnel; and

(3) The payment of costs, expenses and charges incurred in connection with the dissemination of information to the public, to include the costs of printing copies of this statute and the Commissioner's administrative rules. Monies from the Investor Protection Fund may not be used for any purpose unrelated to the administration or enforcement of this chapter.

(f) The Attorney General and the Securities Commissioner shall provide such reports as to the expenditure of monies from the Investor Protection Fund to the Budget Director and the Controller General, and in such detail as they require."

Section 8. This Act shall be referred to as the "Securities Act Amendments of 1996", and the provisions in this Act shall become effective immediately upon its enactment into law.

Approved July 18, 1996

CHAPTER 561

FORMERLY

SENATE BILL NO. 456

AN ACT TO AMEND CHAPTER 23, TITLE 19, DELAWARE CODE, ALSO BEING CHAPTER 303, 70 LAWS OF DELAWARE RELATING TO WORKERS' COMPENSATION

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2312(d), Title 19, Delaware Code, by striking the words "full-time" wherever they appear in said subsection (d).

Approved July 18, 1996

CHAPTER 562

FORMERLY

SENATE BILL NO. 310  
AS AMENDED BY SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO CONTAGIOUS DISEASE GENERALLY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §507 of Title 16 of the Delaware Code by adding a new subsection "(d)" to read as follows:

"(d) The Division of Public Health may contract for Hepatitis B vaccinations for immunizing individuals who volunteer for ambulance companies and/or volunteer fire companies. No such vaccination shall be furnished until after certification as to the person for whom the vaccination is desired; the name, the address, and that the individual is a member in good standing of a volunteer fire company or of a volunteer ambulance company. The name and address of all persons immunized shall be filed with the Division of Public Health. The Division of Public Health may promulgate reasonable rules and regulations regarding the immunization of volunteer firemen and individuals who volunteer for ambulance companies."

Section 2. This Act shall be effective July 1, 1996.

Approved July 18, 1996

## CHAPTER 563

## FORMERLY

SENATE BILL NO. 417  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO PROPOSE AN AMENDMENT TO ARTICLE IV OF THE DELAWARE CONSTITUTION OF 1897 TO INCLUDE THE FAMILY COURT AND COURT OF COMMON PLEAS AS COURTS ESTABLISHED BY THE CONSTITUTION OF THE STATE OF DELAWARE AND ARTICLES III AND IV OF THE DELAWARE CONSTITUTION OF THE STATE OF DELAWARE TO DELETE REFERENCES TO THE ORPHANS' COURT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Article IV, Section 1 of the Constitution of the State of Delaware by adding the words "a Family Court, a Court of Common Pleas," after the phrase "a Court of Chancery," and before the phrase "an Orphans' Court" as that phrase heretofore appears.

Section 2. Amend Article IV, Section 2 of the Constitution by striking the second, third and fourth full paragraphs of said section, and substituting in lieu thereof the following:

"In addition to members of the Supreme Court there shall be other State Judges, who shall be citizens of the State and learned in the law. They shall include: (1) the Chancellor and the Vice-Chancellors; (2) The President Judge and the Associate Judges of the Superior Court, three of whom shall be Resident Associate Judges and one of whom shall after appointment reside in each county of the State; (3) the Chief Judge and the Associate Judges of the Family Court; and (4) the Chief Judge and Judges of the Court of Common Pleas, one of whom after appointment shall reside in each county of the State.

There shall also be such number of additional Vice-Chancellors, Associate Judges and Judges as may hereinafter be provided for by Act of the General Assembly. Each of such Vice-Chancellors, Associate Judges, and Judges shall be citizens of the State and learned in the law.

If it is otherwise impossible to determine seniority of service among the Vice-Chancellors, or among the said Associate Judges or among the said Judges, they shall determine it by lot respectively and certify accordingly to the Governor."

Section 3. Amend Article IV, Section 3 of the Constitution of the State of Delaware by striking the word "and" after the phrase "or Vice-Chancellors," as that phrase appears in the first sentence of the first paragraph of said section; by adding the words ", the Chief Judge and Associate Judges of the Family Court and the Chief Judge and Judges of the Court of Common Pleas" after the phrase "Associate Judges of the Superior Court" as that phrase appears in the first sentence of the first paragraph of said section; by adding the words ", Chief Judge or Associate Judge of the Family Court or Chief Judge or Judge of the Court of Common Pleas" after the phrase "Associate Judge of the Superior Court" as that phrase appears in the sixth sentence of the first paragraph of said section; and by redesignating current paragraph "Fourth" as paragraph "Sixth" and adding new paragraphs "Fourth" and "Fifth" after paragraph "Third" to read as follows:

"Fourth, at any time when the total number of Judges of the Family Court shall be an even number, not more than one-half of the Judges shall be of the same political party, and at any time when the total number of Judges shall be an odd number, then not more than a majority of one Judge shall be of the same political party.

Fifth, at any time when the total number of Judges of the Court of Common Pleas (including the Chief Judge) shall be an even number, not more than one-half of the Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, then not more than a majority of one Judge shall be of the same political party."

Section 4. Amend Article IV, Section 4 of the Constitution of the State of Delaware by striking the word "and" after the phrase "or Vice-Chancellors," as that phrase appears in the first sentence of said section; and by adding the words "the Chief Judge and Associate Judges of the Family Court and the Chief Judge and Judges of the Court of Common Pleas" after the phrase "Orphans' Court" as that phrase appears in the same sentence.

Section 5. Amend Article IV of the Constitution of the State of Delaware by adding thereto a new Section immediately following Section 7, which new Section shall read in its entirety as follows:

"§7A. Jurisdiction of Family Court.

Section 7A. The Family Court shall have all the jurisdiction and powers vested by the laws of this State in the Family Court."

Section 6. Amend Article IV of the Constitution of the State of Delaware by adding thereto a new section, which section shall read in its entirety as follows:

"§7B. Jurisdiction of Court of Common Pleas.

Section 7B. The Court of Common Pleas shall have all the jurisdiction and powers vested by the laws of this State in the Court of Common Pleas."

Section 7. Amend Article IV, Section 13 of the Constitution of the State of Delaware by deleting the phrase "the Superior Court or the Orphans' Court" as found in the title of said section and replacing it with the phrase "or the Superior Court" and by striking paragraph (2) in its entirety, and substituting in lieu thereof the following:

"(2) Upon written request made by the Chancellor, President Judge of the Superior Court, the Chief Judge of the Family Court, or the Chief Judge of the Court of Common Pleas, or in the event of an absence or incapacity, by the next qualified and available Vice-Chancellor, Associate Judge or Judge, who is senior in length of service, to designate one or more of the State Judges (including the Justices of the Supreme Court) to sit in the Court of Chancery, the Superior Court, the Family Court or the Court of Common Pleas, as the case may be, and to hear and decide such causes in such Court and for such period of time as shall be designated. It shall be the duty of the State Judge so designated to serve according to such designation as a Judge of the Court designated. Unless otherwise vested by the laws of this state, a State Judge sitting pursuant to this section in the Superior Court shall not preside at a trial where one or more felony charges are at issue or sentence an individual guilty of one or more felonies except where no Judge of the Superior Court is available to hear or decide the matter. The provisions of this paragraph shall not be deemed to limit in any manner the powers conferred upon the judges of the Superior Court under Section 14 of this Article."

Section 8. Amend Article IV, Section 17 of the Constitution of the State of Delaware by striking the phrase "Orphans' Court" as it appears twice therein and adding the words "the Family Court hereby established, the Court of Common Pleas hereby established" after "established" as it appears in the first sentence of said section; by substituting the word "any" for the word "either" as it appears in the first sentence of said section; and by adding the words "the Family Court, the Court of Common Pleas" after the phrase "Superior Court" as that phrase appears in the second sentence of said section.

Section 9. Amend Article IV, Section 18 of the Constitution of the State of Delaware by adding a second sentence thereto which shall read as follows:

"Until the General Assembly shall otherwise provide, the Chief Judge of the Family Court and the Associate Judges of said Court, respectively, shall each singly exercise all the powers which any law of this State vests in the Judges of Family Court, whether as members of the Court or otherwise, and the Chief Judge of the Court of Common Pleas and the Judges of said Court, respectively, shall each singly exercise all the powers which any law of the State vests in the Judges of the Court of Common Pleas, whether as members of the Court or otherwise."

Section 10. Amend Article IV of the Constitution of the State of Delaware by adding a new Section 34A which shall read as follows:

"§34A. Continuation in office and designation of judicial officers of the Family Court and the Court of Common Pleas.

Section 34A. The Chief Judge and the Associate Judges of the Family Court and the Chief Judge and the Judges of the Court of Common Pleas in office at and immediately before the time this amended Article IV of this Constitution becomes effective shall hold their respective offices until the expiration of their terms, respectively, and shall receive the compensation provided by law."

Section 11. Amend Article IV, Section 37 of the Constitution of the State of Delaware by striking the word "and" after the phrase "the Chancellor," as it appears in the first sentence thereof; and by adding the words ", the Chief Judge of the Family Court and the Chief Judge of the Court of Common Pleas" after the phrase "President Judge of the Superior Court" and before the period in that same sentence."

Section 12. Amend Article III, Section 22 of the Constitution of the State of Delaware by striking the phrase ", Clerks of the Orphans' Court" as that phrase appears therein.

Section 13. Amend Article III, Section 23 of the Constitution of the State of Delaware by striking the phrase ", Clerks of the Orphans' Court" as that phrase appears therein.

Section 14. Amend Article III of the Constitution of the State of Delaware by striking Section 24 in its entirety.

Section 15. Amend Article IV, Section 1 of the Constitution of the State of Delaware by striking the phrase "an Orphans' Court," as that phrase appears therein.

Section 16. Amend Article IV, Section 2 of the Constitution of the State of Delaware by striking the phrase "and of the Orphans' Court" as that phrase appears twice therein.

Section 17. Amend Article IV, Section 3 of the Constitution of the State of Delaware by striking the phrase "and Orphans' Court" as that phrase appears twice therein.

Section 18. Amend Article IV, Section 4 of the Constitution of the State of Delaware by striking "and of the Orphans' Court" as that phrase appears therein.

Section 19. Amend Article IV, Section 5 of the Constitution of the State of Delaware by striking the phrase "and Orphans' Court" as it appears in the title of the Section, and by striking the phrase "and the Orphans' Court" as it appears twice therein.

Section 20. Amend Article IV, Section 6 of the Constitution of the State of Delaware by striking the phrase "and Orphans' Court" as it appears in the title of said Section, and by striking the phrase "and of the Orphans' Court" as it appears in the text.

Section 21. Amend Article IV, Section 8 of the Constitution of the State of Delaware by striking the phrase "and of the Orphans' Court" as it appears therein.

Section 22. Amend Article IV of the Constitution of the State of Delaware by striking Section 9 in its entirety.

Section 23. Amend Article IV, Section 14 of the Constitution of the State of Delaware by striking the phrase "and of the Orphans' Court" as that phrase appears therein.

Section 24. Amend Article IV, of the Constitution of the State of Delaware by striking Subsection (5) of Section 11 in its entirety; by deleting the phrase ", the Court of Chancery and the Orphans' Court" as found in Subsection (6) of Section 11 and replacing said phrase with the phrase "and the Court of Chancery"; and by renumbering all succeeding subsections accordingly.

Section 25. Amend Article IV, Section 18 of the Constitution of the State of Delaware by striking the phrase "and of the Orphans' Court" as it appears therein.

Section 26. Amend Article IV, Section 31 of the Constitution of the State of Delaware by striking the phrase "Orphans' Court" as it appears in the title and the fourth and fifth sentences of the Section, and inserting in each place the phrase "Court of Chancery."

Section 27. Amend Article IV, Section 32 of the Constitution of the State of Delaware by striking the phrase "Orphans' Court" as it appears in the title and the second and third paragraphs, and inserting in each place the phrase "Court of Chancery."

Section 28. Amend Article IV, Section 34 of the Constitution of the State of Delaware by striking the phrase "and of the Orphans' Court" as that phrase appears twice therein.

Section 29. Amend Article IV, Section 36 of the Constitution of the State of Delaware by striking Section 36 in its entirety.

Approved June 26, 1996

## CHAPTER 564

## FORMERLY

## SENATE BILL NO. 480

AN ACT TO APPROPRIATE GENERAL FUNDS TO REDUCE GENERAL OBLIGATIONS  
OF THE STATE

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

WHEREAS, the State of Delaware has \$573 million in outstanding General Obligation indebtedness;

WHEREAS, the General Assembly appropriated \$41 million last year to reduce the State's debt burden;

WHEREAS, a reduction of \$10 million will reduce outstanding indebtedness, save additional millions in debt service payments, and lower outstanding debt per capita;

NOW THEREFORE, the General Assembly deems it appropriate to reduce the outstanding indebtedness of the State by \$10 million.

Section 1. The sum of ten million dollars (\$10,000,000) is hereby appropriated from the General Treasury to the Debt Management Account (12-05-03) for fiscal year 1997.

Section 2. The sum of ten million dollars (\$10,000,000) of General Obligation bonds which have been previously authorized or are to be authorized in future Bond and Capital Improvements Acts are hereby deauthorized. Such sum may not subsequently be reauthorized pursuant to the provisions of Section 7422(b), Title 29, Delaware Code.

Section 3: *This Act is a supplementary appropriation and the funds herein appropriated shall be paid to the Debt Management Account (12-05-03) from the General Fund of the State of Delaware from funds not otherwise appropriated.*

Approved July 19, 1996

## CHAPTER 565

## FORMERLY

## HOUSE SUBSTITUTE NO. 1

## FOR

## HOUSE BILL NO. 514

AS AMENDED BY HOUSE AMENDMENT NO. 1 AND  
HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 23 OF THE DELAWARE CODE RELATING TO THE OPERATION OF A VESSEL OR BOAT WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR AND/OR DRUGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 2301, Title 23 of the Delaware Code, by redesignating subsection (a) as subsection (f), by redesignating subsection (b) as subsection (c), and by inserting new subsections, to read:

"(a) 'alcohol concentration of 0.10 or more' shall mean:

1. An amount of alcohol in a sample of a person's blood equivalent to 0.10 or more grams of alcohol per hundred milliliters of blood; or
2. An amount of alcohol in a sample of a person's breath equivalent to 0.10 or more grams per two hundred ten liters of breath.

(b) 'chemical test' or 'test' shall include any form or method of analysis of a person's blood, breath, or urine for the purposes of determining alcohol concentration or the presence of drugs which is approved for use by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory, any state or federal law enforcement agency, or any hospital or medical laboratory. It shall not, however, include a preliminary screening test of breath performed in order to estimate the alcohol concentration of a person at the scene of a stop or other initial encounter between a law enforcement officer and the person.

(c) 'Operating a vessel or vessel operation' shall include driving, operating or having actual physical control of a vessel or boat.

(d) 'Prior or previous offense' shall mean:

1. A conviction pursuant to this chapter, or a similar statute of any state, local jurisdiction or the District of Columbia, within 5 years immediately preceding the date of the present offense; or
2. A conviction, under a criminal statute encompassing death or injury caused to another person by the person's operation of a vessel, where operating a vessel under the influence or with a prohibited alcohol concentration was an element of the offense.

For the purpose of computing the periods of time set out in § 2305 of this title, the period shall run from the date of the commission of the prior or previous offense to the date of the commission of the charged offense. In any proceeding under § 2305 of this title, a person may not challenge the validity of any prior or previous conviction unless that person first successfully challenges the prior or previous conviction in the court in which the conviction arose and provides

written notice of the challenge in the present proceeding to the prosecution at least 20 days before trial."

"(g) 'while under the influence' shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgement, sufficient physical control, or due care in the operation of a vessel or boat."

Section 2. Amend § 2302(a), Title 23 of the Delaware Code, by striking the text: "while under the influence of intoxicating liquor or drugs or any combination of drugs and/or intoxicating liquors" and by inserting in lieu thereof a colon [:], and by adding new paragraphs, to read:

- "(1) when the person is under the influence of alcohol;
- (2) when the person is under the influence of a drug;
- (3) when the person is under the influence of any combination of alcohol and any drug;
- (4) when the person's alcohol concentration is 0.10 or more; or
- (5) when the person's alcohol concentration is, within four hours after the time of vessel operation, 0.10 or more."

Section 3. Amend § 2302, Title 23 of the Delaware Code, by inserting new subsections, to read:

"(d) It shall be an affirmative defense to a prosecution premised on subsection (a) (5) of this section if the person proves by a preponderance of evidence that the person consumed a sufficient quantity of alcohol after the time of actual vessel operation and before any sampling to cause the person's alcohol concentration to exceed 0.10. Such evidence shall not be admitted unless notice of this defense is given to the prosecution at least twenty days before trial.

(e) The charging document may allege a violation of subsection (a) of this section without specifying any particular subparagraph of subsection (a) and the prosecution may seek conviction under any of the subparagraphs of subsection (a)."

Section 4. Amend § 2303, Title 23 of the Delaware Code, by redesignating subsections "(g)" and "(h)" as "(m)" and "(n)", respectively.

Section 5. Amend § 2303, Title 23 of the Delaware Code, by striking subsection (f), and inserting in lieu thereof the following:

"(f) *Admissibility in evidence of results of chemical test* - For purposes of a conviction premised upon § 2302(a) of this title or any proceeding pursuant to this code in which an issue is whether a person was operating a vessel while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person's blood, breath, or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within four hours of operating the vessel or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in § 2301(b) of this title, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath, or urine without regard to any margin of error or tolerance factor inherent in such tests.

(g) Evidence of an alcohol concentration of 0.05 or less in a person's blood, breath, or urine sample taken within four hours of operating a vessel and tested as defined in § 2301(b) of this title is prima facie evidence that the person was not under the influence of alcohol within the meaning of this chapter. Evidence of an alcohol concentration of more than 0.05 but less than 0.10 in a person's blood, breath, or urine

sample taken within four hours of operating a vessel and tested as defined in § 2301(b) of this title shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

(h) Evidence obtained through a preliminary screening test of a person's breath in order to estimate the alcohol concentration of the person at the scene of a stop or other initial encounter between a law enforcement officer and the person shall be admissible in any proceeding to determine whether probable cause existed to believe that a violation of this code has occurred. However, such evidence shall not be admissible in the determination of guilt under this section.

(i) Nothing in this section shall preclude conviction of an offense defined in this chapter based solely on admissible evidence other than the results of a chemical test of a person's blood, breath, or urine to determine the concentration or presence of alcohol or drugs.

(j) A jury shall be instructed by the court in accordance with the applicable provisions of this section in any proceeding pursuant to this chapter in which an issue is whether a person was operating a vessel while under the influence.

(k) For the purposes of introducing evidence of a person's alcohol concentration pursuant to this section, a report signed by the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist who performed the test or tests as to its nature is prima facie evidence, without the necessity of the Forensic Toxicologist, Forensic Chemist, or the State Police Forensic Analytical Chemist personally appearing in court:

(1) That the blood delivered was properly tested under procedures approved by the Forensic Sciences Laboratory, office of the Chief Medical Examiner, or the Delaware State Police Crime Laboratory;

(2) That those procedures are legally reliable;

(3) That the blood was delivered by the officer or persons stated in the report; and,

(4) That the blood contained the alcohol therein stated.

(l) Any report introduced under subsection (k) of this section must:

(1) Identify the Forensic Toxicologist, Forensic Chemist, or State Police Analytical Chemist as an individual certified by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory, or any county or municipal police department employing scientific analysis of blood, as qualified under standards approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, or the Delaware State Police Crime Laboratory to analyze blood;

(2) State that the person made the analysis of the blood under the procedures approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, or the Delaware State Police Crime Laboratory; and

(3) State that the blood, in the person's opinion, contains the resulting alcohol concentration within the meaning of this chapter.

Nothing in this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the report entered pursuant to subsection (k) and (l) of this section.

(4) For purposes of establishing the chain of physical custody or control of evidence defined in this section which is necessary to admit such evidence in any proceeding, a statement signed by each successive person in the chain of

custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery stated, without the necessity of a personal appearance in court by the person signing the statement, in accordance with the same procedures outlined in 10 Del. C. § 4331(3).

(5) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least fifteen days prior to the trial, require the presence of the Forensic Toxicologist, Forensic Chemist, State Police Analytical Chemist, or any person necessary to establish the chain of custody as a witness in the proceeding. The chain of custody or control of evidence defined in this section is established when there is evidence sufficient to eliminate any reasonable probability that such evidence has been tampered with, altered, or misidentified."

Section 6. Amend § 2305, Title 23 of the Delaware Code, by striking subsections (2) and (3), and by inserting new text, to read:

"(2) For a second offense occurring within 5 years from a prior offense, be fined not less than \$500 nor more than \$2,000, and imprisoned not less than 60 days, nor more than 18 months. No person sentenced under this subsection shall receive a suspended sentence.

(3) For a third offense occurring within 5 years from a prior offense, be guilty of a Class G Felony, be fined not less than \$1,000 nor more than \$3,000 and imprisoned not less than one year nor more than two years. The provisions of

§ 4205(b)(7) or § 4217 of Title 11 of the Delaware Code or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to an early release, furlough, or reduction of any kind. No conviction for violation of this chapter for which a sentence is imposed pursuant to this subsection shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11 of the Delaware Code. No offense for which sentencing pursuant to this subsection is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11 of the Delaware Code.

(4) For a fourth or subsequent offense occurring any time after three prior offenses, be guilty of a Class E Felony, be fined not less than \$2,000 nor more than \$6,000 and imprisoned not less than two years nor more than five years. The provisions of this title or any other statute notwithstanding, a court may consider prior offenses outside a five-year period for sentencing pursuant to this subsection. The provisions of § 4205(b)(5) or § 4217 of Title 11 of the Delaware Code or any other statute to the contrary notwithstanding, the first 6 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. No conviction for violation of this chapter for which a sentence is imposed pursuant to this subsection shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11 of the Delaware Code. No offense for which sentencing pursuant to this subsection is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11 of the Delaware Code.

(5) In addition to the penalties otherwise authorized by this section, a person convicted of a violation of § 2302(a) of this title committed while a person who has not yet reached his or her seventeenth birthday is on or in the vessel shall:

(a) For the first offense, be fined an additional minimum of \$200 and not more than an additional \$1,000 and sentenced to perform a minimum of forty hours of community service in a program benefiting children.

(b) For each subsequent like offense, be fined an additional minimum of \$500 and not more than an additional \$2,000 and sentenced to perform a minimum of eighty hours of community service in a program benefiting children.

(c) Violation of this subsection shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of § 2302(a) of this title. Nothing in this subsection shall prevent conviction for a violation of both § 2302(a) of this title and any offense as defined elsewhere by the laws of this state.

(d) Violation of or sentencing pursuant to this subsection shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim, nor shall a violation of or sentencing pursuant to this subsection be admissible as evidence in the trial of any civil action.

(6) a person who has been convicted of prior or previous offenses under this chapter need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this chapter on a person with prior or previous offenses under this chapter. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to subsection (3) or (4) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the court at a hearing on the motion that the defendant falls within subsection (3) or (4) of this section, the court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.

(7) The Justice of the Peace Courts shall have jurisdiction for violations of this chapter, except those offenses which must be sentenced pursuant to subsection (3) or (4) of this section.

(8) In addition to the penalties prescribed in subsections (2), (3), and (4) of this section, anyone convicted of a subsequent like offense shall be ordered to complete a program of education or rehabilitation which may include inpatient treatment and be followed by such other programs as established by the training facility, not to exceed a total of 15 months, and pay a fee not to exceed the maximum fine."

Section 7. Amend § 2306, Title 23 of the Delaware Code, by striking the text thereof in its entirety, and by inserting in place thereof new text, to read:

"In addition to any other powers of arrest, any law enforcement officer is hereby authorized to arrest without warrant any person who the officer has probable cause to believe has violated the provisions of this chapter, regardless of whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this chapter occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within four hours of the alleged operation of a vessel if there is reason to believe the person has fled the scene of an accident in which the person was involved, and provided there is probable cause to believe that the violation of this chapter occurred within the officer's jurisdiction."

Approved July 19, 1996

## CHAPTER 566

## FORMERLY

## HOUSE BILL NO. 543

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO UNEMPLOYMENT COMPENSATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3325 of Title 19 of the Delaware Code, by inserting a new sentence, after the third sentence which ends with the word "benefits", and before the fourth sentence, which begins with the word "Discretionary", to read:

"For non-fraud overpayments, the deduction from subsequently awarded benefits shall be only 50% of the payable weekly benefit amount until the overpayment is completely repaid, while 100% of the payable weekly benefit amount shall be deducted from subsequently awarded benefits until the overpayment is completely repaid when the overpayment was the result of fraud."

Section 2. This Amendment shall apply to the recoupment of overpayments of benefits made on or after the date of enactment of this Act into law.

Approved July 19, 1996

## CHAPTER 567

## FORMERLY

## HOUSE BILL NO. 636

AN ACT TO AMEND TITLE 29, CHAPTER 58 OF THE DELAWARE CODE RELATING TO THE REQUIREMENTS IMPOSED UPON STATE EMPLOYEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend subsection (b) of § 5806, Title 29, Delaware Code, by adding the following sentence as a separate unnumbered paragraph after the existing subparagraph (b) (4):

"Provided however, that a minimal gratuity provided on occasion to blind or disabled state employees or other blind or disabled persons supervised by the Division of Visually Impaired, shall not be considered to be a violation of this section."

Approved July 19, 1996

CHAPTER 568

FORMERLY

HOUSE BILL NO. 667

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO NEW CASTLE COUNTY GOVERNMENT TERMS OF OFFICE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1141, Chapter 11, Title 9, Delaware Code by striking in its entirety the last sentence of said section and substituting in lieu thereof the following:

“an elected official shall take office on the first Tuesday in November following their election.”

Section 2. Amend § 1165(e), Chapter 11, Title 9, Delaware Code by striking the word “January” as it appears therein and substituting in lieu thereof the word “November”.

Section 3. Amend Chapter 11, Title 9, Delaware Code by adding a new section to read as follows:

“§ 1169. Initial Council Meeting.

Except in the case of an emergency declared by the Governor, the County governing body shall not meet between the general election day and the following Tuesday when the newly elected officials shall take office.”

Section 4. This Act shall be effective for all terms of office that would terminate after the 1996 general election.

Section 5. Any official whose term of office commenced prior to the 1996 general election shall receive all pay and other benefits they would have been entitled to but for the shortening of their term of office by this Act.

Approved July 25, 1996

## CHAPTER 569

## FORMERLY

HOUSE BILL NO. 666  
AS AMENDED BY SENATE AMENDMENT NO. 1 AND  
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO THE NUMBER AND TERM OF OFFICE OF NEW CASTLE COUNTY COUNCIL MEMBERS; AND VOTE REQUIREMENTS FOR CERTAIN ORDINANCES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

*Section 1. Amend § 1141, Chapter 11, Title 9, Delaware Code, by striking said section in its entirety and substituting in lieu thereof the following:*

"§ 1141. Number and Term.

(a) For any general or special election prior to the general election of 1998 the county government shall consist of seven members. Six of these members shall be elected from councilmanic districts. The seventh member shall be elected at large from New Castle County and shall serve as president of the county government.

(b) Notwithstanding any law to the contrary, except for the president of county council, the terms of officials of the county governing body elected in the 1996 general election and any special election held prior to the 1998 general election shall terminate on the first Tuesday in November following the 1998 general election. The president of county council shall continue to be elected in the Presidential election year.

(c) Notwithstanding any law to the contrary, for the 1998 general election and all subsequent elections the county government shall consist of thirteen members. Twelve of these members shall be elected from councilmanic districts. The thirteenth member shall be elected at large from New Castle county and shall serve as president of the county government.

(d) Notwithstanding any law to the contrary, for the 1998 general election the county council shall reapportion the county into thirteen councilmanic districts in the manner specified in § 1165 of this title using the 1990 United States decennial census. This reapportionment shall be completed on or before January 1, 1998.

(e) In the 1998 general election one council member shall be elected for a four year term from each of the 1st, 3rd, 5th, 7th, 9th, and 11th, councilmanic districts and for a two year term from each of the 2nd, 4th, 6th, 8th, 10th, and 12th councilmanic districts.

(f) In the 2000 general election, one council member shall be elected for a two year term from each of the even membered districts, and one council member shall be elected for a four year term and shall be elected at large and shall serve as president of county government.

(g) In the 2002 general elections, one council member shall be elected for a four year term from each of the even numbered districts and one council member shall be elected for a two year term from each of the odd numbered districts, except the President of County Council. Thereafter, all council members shall be elected for four year terms, or until their successors have been elected and take office.

(h) An elected official shall take office on the first Tuesday in November following the general election.

Section 2. Amend § 1156(d), Chapter 11, Title 9, Delaware Code by striking therefrom the words "five sevenths" and substituting in lieu thereof the words "ten thirteenths".

Section 3. Amend § 1157, Chapter 11, Title 9, Delaware Code, by striking the words "five sevenths" as they appear in the third sentence of said section and substituting in lieu thereof the words "ten thirteenths".

Section 4. Amend § 1165(c), Chapter 11, Title 9, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof the following:

"As used in § 1166 of this title, the phrase 'odd-numbered federal decennial census' shall refer to the decades whose first digit is an odd number, for example, 2010, 2030, 2050, and the phrase 'even-numbered federal decennial census' shall refer to the decades whose first digit is an even number, for example, 2000, 2020, 2040."

Section 5. Amend §§ 1166(b), (c), (d) and (e) in their entirety and substituting in lieu thereof, respectively, the following:

"(b) In order to stagger the terms of the officials of the county governing body, the councilmanic districts are divided into 3 categories. One category shall consist of councilmanic districts 1, 3, 5, 7, 9, and 11, and the second category shall consist of councilmanic districts 2, 4, 6, 8, 10 and 12, and the third category shall consist of councilmanic district 13.

(c) The first officials elected in councilmanic districts 2, 4, 6, 8, 10, and 12 after the redistricting following each even numbered federal decennial census shall serve a term of 4 years. The first officials elected in said councilmanic districts after the redistricting following each odd-numbered federal decennial census shall serve a term of 2 years.

(d) The first officials elected in councilmanic districts 1, 3, 5, 7, 9 and 11 after the redistricting following each even-numbered federal decennial census shall serve a term of 2 years. The first officials elected in said councilmanic districts after the redistricting following each odd-numbered federal decennial census shall serve a term of 4 years.

(e) The officials elected to district 13 shall serve a term of 4 years and shall be elected in even-numbered presidential election years.

Approved July 25, 1996

## CHAPTER 570

## FORMERLY

SENATE BILL NO. 412  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 9 OF TITLE 3 OF THE DELAWARE CODE TO FURTHER DEFINE ALLOWABLE RESIDENTIAL USE OF LANDS LOCATED IN AGRICULTURAL PRESERVATION DISTRICTS AND TO ENABLE THE AGRICULTURAL PRESERVATION FOUNDATION TO MAKE INSTALLMENT PAYMENTS IN THE PURCHASE OF AGRICULTURAL PRESERVATION EASEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 2. Amend §913, Chapter 9, Title 3, Delaware Code, by designating the existing language of the section as subsection (a) and adding a new subsection (b) to read as follows:

“(b) The Foundation shall be authorized to enter into installment purchase agreements and to execute all documents necessary or desirable thereto to qualify such agreements for exemption from federal or State taxation to the extent permitted by the tax laws. Pursuant to the installment purchase agreements, the Foundation shall acquire preservation easements, establish special accounts for each agreement from which principal and interest payments shall be made, and deposit into such special accounts amounts necessary to fund the agreements. The special accounts may be administered by a bank, escrow agent, or other qualified paying agent approved by the Foundation, and the deposited funds may only be invested in a manner approved by the Secretary of Finance. The amounts to be paid under an agreement shall not exceed the amounts available from the special account related thereto, including earnings thereon. The Foundation may under the terms of the agreement impose on the seller through direct charge or installment payment reduction the costs associated with the agreement and the special account. The Foundation is authorized to use all funds appropriated to it to acquire preservation easements through installment purchase agreements.”

Section 3. The Foundation shall be entitled, subject to the concurrence of the real property owners, to modify existing District Agreements and Preservation Easements to conform to the provisions of Section 1 hereof.

Approved July 25, 1996

CHAPTER 571

FORMERLY

HOUSE BILL NO. 661

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO EDUCATION AND THE LOSS OR DESTRUCTION OF BOOKS AND OTHER SCHOOL PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 17, Title 14 of the Delaware Code, by inserting a new section, to read:

**"§ 1722. Accounting for textbooks, subject matter materials, and other school property entrusted to individual students.**

(a) For the purposes of this section:

(1) 'costs' shall be the cost of lost or destroyed textbooks, subject matter materials, supplementary books, instructional computer software, and other school property distributed to and entrusted to individual students;

(2) 'responsible person' shall include each student, the parents of each student who have a duty to support the student under 13 Del. C. § 501, and any guardian who has a duty to support a student.

(b) Each reorganized school district shall adopt a written policy that:

(1) at least annually requires responsible persons to refund to the district their costs;

(2) sets forth an effective process to collect at least annually such costs from the responsible persons; provided, however, that the process may permit a student to perform school or community service, at the district's option, in lieu of repaying book costs, if and only if each responsible person's income falls below federal poverty guidelines, as they may be amended from time to time; and further provided that a student otherwise required to perform such service who refuses to perform such service, shall be subject to disciplinary action; and

(3) provides that local district funds shall cover the cost of all lost or destroyed books which are required to be collected from responsible persons pursuant to a written policy which conforms to this section but are not collected.

(c) Each reorganized school district shall provide to the Superintendent of the Department of Public Instruction and each member of the Joint Finance Committee by February 1 of each year a copy of its current policy adopted pursuant to this section together with an accounting of costs recovered, costs which are not recovered, public service hours required in lieu of cost repayment, public service hours performed, and disciplinary action taken pursuant to its policy in the past three years."

Section 2. This Act shall be effective upon enactment; provided that the accounting required under Section 1 shall commence annually as of February 1, 1997, notwithstanding that less than 3 years' data is then available, to the extent that the data is available.

Approved July 25, 1996

## CHAPTER 572

## FORMERLY

## HOUSE BILL NO. 420

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO HANDICAPPED PERSONS EMPLOYMENT PROTECTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 722 (2), Subchapter III, Chapter 7, Title 19 of the Delaware Code by deleting the words "20 or more employees" and substituting in lieu thereof the words "15 or more employees".

Approved July 25, 1996

## CHAPTER 573

## FORMERLY

## HOUSE BILL NO. 369

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO WORKMEN'S COMPENSATION RATING, EXPERIENCE RATING PLANS, AND EMPLOYER CLASSIFICATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2614, Title 18 of the Delaware Code, by striking subsection (a) thereof in its entirety and by substituting in lieu thereof a new subsection to read:

"(a) Each advisory organization and every insurer subject to this chapter that makes its own rates, shall provide within this State reasonable means whereby any person aggrieved by the application of its rating system, including but not limited to issues of proper formulation and application of experience modification factors and/or proper classification of employers, may upon that person's written request be heard in person or by the person's authorized representative to review the manner in which such advisory organization's or insurer's rating system, experience rating plan, or employer classifications have been applied in connection with the insurance afforded the aggrieved person."

Section 2. Amend § 2614(e), Title 18 of the Delaware Code, by striking the number "10" as it appears therein and by substituting in lieu thereof the number "20".

Approved July 25, 1996

CHAPTER 574

FORMERLY

HOUSE BILL NO. 424

AN ACT TO AMEND CHAPTER 33, TITLE 19 OF THE DELAWARE CODE RELATING TO UNEMPLOYMENT COMPENSATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 33, Title 19, Delaware Code by adding a Section 3329 to read as follows:

"Section 3329. Voluntary withholding of federal income tax from benefits.

(1) An individual filing a new claim for unemployment insurance benefits shall, at the time of filing such claim, be advised that:

(a) Unemployment Insurance benefits are subject to federal, state, and local income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment insurance benefits at the amount specified in the federal Internal Revenue Service Code; and,

(d) The individual shall be permitted to change a previously elected withholding status no more than once during a claim benefit year.

(2) Amounts deducted and withheld from unemployment insurance benefits shall remain in the Unemployment Insurance Trust Fund until transferred to the federal taxing authority as a payment of income tax.

(3) The Director of Unemployment Insurance shall follow all procedures specified by the United States Department of Labor and the federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(4) Amounts deducted and withheld from unemployment insurance benefits for federal income tax shall be deducted and withheld only after amounts are deducted and withheld, in the deduction priority established by the Director of Unemployment Insurance, for any overpayments, child support obligations, food stamp over-issuances or any other amounts required to be deducted and withheld under this Title.

(5) The provisions of this Section relating to the voluntary deduction and withholding of federal income tax from unemployment insurance benefits shall apply to benefit payments made on or after January 1, 1997."

Approved July 25, 1996

## CHAPTER 575

## FORMERLY

HOUSE BILL NO. 660  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 2AN ACT TO AMEND TITLES 2, 9 AND 30 OF THE DELAWARE CODE RELATING TO  
AERONAUTICS AND COUNTY BUILDING CODES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 102, Chapter 1, Title 2 of the Delaware Code by inserting the following definitional paragraphs in alphabetical order and by redesignating all of the numbered paragraphs in said section accordingly:

"(10) 'Airport Approach Area' means all that area lying within and below an inclined plane as defined in Federal Aviation Regulation (FAR) Part 77.

(17) 'Helicopter Landing Site' means a heliport, helistop or helipad or any other surface used or usable for helicopter operations as defined in (FAR) Part 77.

(20) 'Obstruction' means any physical hazard to flight constructed, installed, or planted by man, whether real or artificial including, but not limited to, buildings, trees, towers, smokestacks and overhead transmission lines.

(25) 'Runway approach area' means an imaginary trapezoidal shape, beginning at the end of a runway with an initial width parallel to the runway end extending for a distance of 500 feet from each side of the runway centerline, running lengthwise from the runway end along said centerline for a distance of 3000 feet, and ending with a line parallel to the runway end extending for a distance of 875 feet from each side of said runway centerline, pursuant to FAA Advisory Circular 150/5300-13.

(26) 'Public use airport' means an airport open for use by the public for general aviation purposes."

Section 2. Amend § 132, Chapter 1, Title 2 of the Delaware Code by striking the title of said section and substituting in lieu thereof a new title which shall read as follows:

"§ 132. Coordination of Aeronautics Matters and Activities with and between the Federal Government, Political Subdivisions and Others."

Section 3. Amend § 133, Chapter 1, Title 2 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof a new section which shall read as follows:

"§ 133. Reports to Federal Agencies; Preservation of Aircraft Involved in Accidents.

The Federal Aviation Administration has primary responsibility for investigating aircraft accidents. Initial reports of accidents may be directed by State and/or local police agencies that report such aeronautical accident information to the Department through the Office of Aeronautics. The Office of Aeronautics shall report to the appropriate federal agency all aeronautical accidents of which it is informed and shall cooperate with and assist federal agencies in the conduct of any investigation. Police agencies involved in any accident investigation shall preserve, protect and prevent removal of component parts of any aircraft involved in an accident until the investigating agency or Office of Aeronautics gives clearance for removal of the wreckage."

Section 4. Amend § 134(c), Chapter 1, Title 2 of the Delaware Code by striking said subsection in its entirety and substituting in lieu thereof a new subsection which shall read as follows:

“(c) Rules, regulations and standards for aeronautics are published by the United States Department of Transportation, Federal Aviation Administration. These regulations, as amended from time to time, have nationwide jurisdiction and shall govern all aeronautics in this State, except where the laws of this State provide additional protection.”

Section 5. Amend § 136, Chapter 1, Title 2 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof a new section which shall read as follows:

“§ 136. Technical Services to Public Use Airports and Political Subdivisions.

The Department may, insofar as is reasonably possible, offer its technical services and advice to any political subdivision or public use airport desiring those services in connection with the actual or proposed construction, maintenance or operation of an airport.”

Section 6. Amend § 142, Chapter 1, Title 2 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof a new section which shall read as follows:

“§ 142. Financial Assistance to Political Subdivisions, Public Use Airports and Education Programs.

The Department may, through the Office of Aeronautics, render assistance in the acquisition, development, operation or maintenance of airports and aviation projects of political subdivisions and public use airports, and in the provision of training for formal educational programs, from funds generated through fees, taxes and other sources applicable to aeronautics and administered by the Office of Aeronautics.”

Section 7. Amend § 161, Chapter 1, Title 2 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof a new section which shall read as follows:

“§ 161. Declaration of Policy.

(a) The Federal Aviation Regulations (promulgated by the Federal Aviation Administration pursuant to Part A of Subtitle VII of Title 49 of the United States Code, as amended) prescribe uniform rules and regulations pertaining to aviation. These regulations, as may be amended, are hereby adopted as the aeronautics regulations of the State of Delaware. They shall be augmented and supplemented as necessary to regulate matters peculiar to this State.

(b) When authorized by the General Assembly, the Department of Transportation shall procure and operate transport-type aircraft to satisfy the needs of the State. Other State agencies may own and operate specialized light planes and helicopters required for special needs such as police work.”

Section 8. Amend §§ 162 through 169, inclusive, of Chapter 1, Title 2 of the Delaware Code by deleting said sections in their entirety and substituting in lieu thereof the following:

“§ 162. Airports, Landing Areas, and Other Air Navigation Facilities.

The Department, through the Office Aeronautics may approve and license airports and helicopter landing sites, or other air navigation facilities, in accordance with regulations it adopts pertaining to such approval and licensure. Licenses granted under this section shall be renewed annually in conjunction with the Federal Aviation Administration sponsored airport survey program.

§ 163. Refusal and Revocation of License; Registration or Approval.

The Department, through the Office of Aeronautics, may suspend or revoke any certificate of approval or license issued by it when it determines that an airport, restricted landing area, or other navigation facility is not being maintained or used in accordance with the provisions of this chapter and the rules and regulations lawfully promulgated by it pursuant thereto."

Section 10. Amend Chapter 1, Title 2 of the Delaware Code by adding thereto a new subchapter which shall read as follows:

"Subchapter V. Flight Instruction/Aircraft Rental.

§ 191. Insurance Notice.

All contracts for flight instruction and/or the rental or leasing of aircraft in the State shall contain a written statement notifying the student, renter, lessee or bailee of the extent of insurance coverage applicable to the lessor and lessee. The student, renter, lessee, or bailee shall sign such statement to signify that he/she is aware of the extent of such insurance coverage."

Section 11. Amend § 5101, Chapter 51, Title 30 of the Delaware Code to add a new paragraph, to read as follows:

"(7) 'Aviation gasoline' is gasoline manufactured and distributed exclusively for use in internal combustion aircraft engines."

Section 12. Amend Subsection 5113(a), Chapter 51, Title 30 of the Delaware Code to add an additional sentence at the end of said subsection to read as follows:

"Aviation gasoline shall be reported separately from other gasolines."

Section 13. Amend §§ 301, 304, 307, 309 and 310, Chapter 3, Title 2 of the Delaware Code, by striking the word "Aeronaut" wherever it appears in those sections, and replacing it with the word "Airman".

Section 14. Amend §§ 306 and 309, Chapter 3, Title 2 of the Delaware Code by striking the word "Aeronauts" wherever it appears in said sections and replacing it with the word "Airmen".

Section 15. Amend § 501, Chapter 5, Title 2 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof a new section which shall read as follows:

"§ 501. Adoption of Federal Aviation Regulations Governing Aircraft Operations

The federal government has enacted laws (Part A of Subtitle VII of Title 49 of the United States Code, as amended) and promulgated regulations concerning the operation of aircraft. The rules and regulations governing aviation are published in the Federal Aviation Regulations issued by the Federal Aviation Administration of the U.S. Department of Transportation. These regulations, as published and as subsequently amended, are hereby accepted and adopted as the laws of Delaware governing aircraft operation."

Section 16. Amend §§ 502 through 508, inclusive, of Chapter 5, Title 2 of the Delaware Code by deleting said sections in their entirety and substituting in lieu thereof new §§ 502 and 503, which shall read as follows:

"§ 502. Use of Alcohol or Drugs in Connection With Aircraft Operations

The State of Delaware recognizes the serious hazard to safe aircraft operations and to the public resulting from the impairment of an airman's faculties due to the use of alcohol or drugs. In conformity with Parts 61, 65 and 91 of the Federal Aviation Regulations, upon reasonable suspicion that an airman may be acting under the influence of alcohol or drugs or be in possession of illegal drugs, the airman shall submit to alcohol and/or drug testing administered

by the Delaware State Police. Test results shall be forwarded to the Federal Aviation Administration by the Department.

§ 503. Penalties; Jurisdiction.

Violations under this chapter shall be referred by the Department, through the Office of Aeronautics, to the Federal Aviation Administration for enforcement action and/or imposition of sanctions."

Section 17. Amend Part 1, Title 2 of the Delaware Code by adding thereto a new chapter which shall read as follows:

"Chapter 6. Obstructions in Airport Approach Areas.

§ 601. Jurisdiction.

The Department may enforce the provisions of this chapter by the filing of a complaint in a court of appropriate jurisdiction, including a complaint for injunctive relief.

§ 602. Erection or Maintenance of Obstructions, Prohibitions.

(a) A building permit issued by the County or municipality having land use jurisdiction, after review and approval as provided herein, shall be required for the construction, erection, placement or alteration of any smokestack, tree, silo, flagpole, elevated tank, power line or radio or television tower, antenna, building, structure or other improvement to real property which meets any of the following conditions:

(1) is greater than two hundred (200) feet in height above ground level; or

(2) is greater in height than an imaginary trapezoidal shape, beginning at the end of a runway of a public use airport, at an initial width of fifty (50) feet, and extending outward and upward at a slope of 100:1 for a distance of twenty thousand (20,000) feet, to a width of three thousand (3000) feet at its ending point; or

(3) is located within the runway approach area of each public use airport in the State; or

(4) otherwise constitutes an obstruction as defined in this title or acts as an obstruction to the operation of aircraft as those terms are defined by Federal Aviation Regulation (FAR) Part 77.

(b) Such building permit for each such object or structure will not be issued until such time as the Department of Transportation through the Office of Aeronautics has reviewed and approved the application. The Department of Transportation, through the Office of Aeronautics, shall respond to the county or municipality having land use jurisdiction, regarding any objections it has to the issuance of a building permit, within thirty (30) days of receipt of such permit for review

(c) In order to provide safe aircraft approach areas to airport runways, the Department may, after notice and a hearing, enter upon any lands or improvements located thereon which are situated in said airport approach areas and may remove obstructions to aviation. Owners of obstructions that were erected prior to the enactment of, or in compliance with, this Chapter, are entitled to compensation for the removed obstruction and/or any damages incurred in the removal thereof from funds applicable to aeronautics and administered by the Office of Aeronautics. The process for condemnation of real property or improvements thereon under this Chapter as required by applicable law and constitutional provisions shall be governed by the procedures set forth in Chapter 61 of Title 10 of the Delaware Code and Chapter 95, Title 29 of the Delaware Code.

(d) In order to ensure that new structures are not erected that pose potential obstruction hazards, it shall be unlawful to erect any new structure or add to any existing structure if such structure is thereby made to extend more than two hundred (200) feet above ground level at its site, without giving prior notice to and obtaining prior notice to and obtaining prior approval from the Department.

§ 603. Erection or Maintenance of Obstructions; Penalties.

(a) Whoever constructs, erects, places or alters any obstruction without first obtaining a building permit as required in this chapter shall, upon being found liable therefore in a civil proceeding, be fined an amount not exceeding one thousand dollars (\$1,000). Each day's continuation of a violation of this section shall be deemed a separate and distinct offense, all of which may be brought together in a single action."

Section 18. If any provision of this Act, or the application thereof to any person or circumstance, is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the other provisions of this Act which shall be given full force and effect without said invalid provision or application, and to that end the provisions of this Act shall be declared to be severable.

Section 19. Amend Section 3005, Title 9 of the Delaware Code by adding a new subsection (e) which shall read as follows:

"(e) A building permit shall be required for the construction, erection, placement, or alteration of any smokestack, tree, silo, flagpole, elevated tank, power line, radio or television tower, antenna, building, structure or other improvement to real property which meets any of the following conditions:

- (1) is greater than two hundred (200) feet in height above ground level; or
- (2) is greater in height than an imaginary trapezoidal shape, beginning at the end of a runway of a public use airport, at an initial width of fifty (50) feet, and extending outward and upward at a slope of 100:1 for a distance of twenty thousand (20,000) feet, to a width of three thousand (3000) feet at its ending point; or
- (3) is located within the runway approach area of each public use airport in the State.
- (4) otherwise acts as an obstruction to the operation of aircraft as those terms are defined in Chapter 6 of Title 2 or by Federal Aviation Regulations (FAR) Part 77: or
- (5) Such building permit for each such object or structure will not be issued until such time as the Department through the Office of Aeronautics, has approved the application. The Department of Transportation, through the Office of Aeronautics, shall respond to the county or municipality having land use jurisdiction regarding any objections to the issuance of a building permit, with thirty (30) days of receipt of such permit for review."

Section 20. Amend Section 4407, Chapter 9 of the Delaware Code by adding a new subsection (d), which shall read as follows:

"(d) A building permit shall be required for the construction, erection, placement or alteration of any smokestack, tree, silo, flagpole, elevated tank, power line, radio or television tower, antenna, building, structure or other improvement to real property which:

- (1) is greater than two hundred (200) feet in height above ground level; or
- (2) is greater in height than an imaginary trapezoidal shape beginning at the end of a runway of a public use airport, at an initial width of fifty (50) feet, and extending outward and upward at a slope of 100:1 for a distance of twenty

thousand (20,000) feet, to a width of three thousand (3000) feet at its ending point; or

(3) is located within the approach runway area of each public use airport.

(4) otherwise acts as an obstruction to the operation of aircraft as those terms are defined in Chapter 6 of Title 2 or by Federal Aviation Regulations (FAR) Part 77.

(5) Such building permit for each such object or structure will not be issued until such time as the Department through the Office of Aeronautics has approved the application. The Department of Transportation, through the Office of Aeronautics, shall respond to the county or municipality having land use jurisdiction, regarding any objections it has to the issuance of a building permit, with thirty (30) days of receipt of such permit for review."

Section 21. Amend Section § 6302, Title 9 of the Delaware Code by redesignating existing subsection (e) as subsection (f) and inserting a new subsection (e) which shall read as follows:

"(e) A building permit shall be required for the construction, erection, placement or alteration of any smokestack, tree, silo, flagpole, elevated tank, power line, radio or television tower, antenna, building, structure or other improvement to real property which:

(1) is greater than two hundred (200) feet in height above ground level; or

(2) is greater in height than an imaginary surface extending outward and upward at a slope of 100:1 for a horizontal distance of twenty thousand (20,000) feet from the nearest point of the nearest runway of each public use airport in the State; or

(3) is located within three thousand (3,000) feet of the nearest point of the nearest runway of each public use airport in the State; or

(4) otherwise acts as an obstruction to the operation of aircraft as those terms are defined in Chapter 6 of Title 2 or by Federal Aviation Regulations (FAR) Part 77.

(5) Such building permit for each such object or structure will not be issued until such time as the Department through the Office of Aeronautics has approved the application."

Approved July 25, 1996

## CHAPTER 576

## FORMERLY

## HOUSE BILL NO. 600

## AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO CREDIT INSURANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 18, Delaware Code by striking Chapter 37 thereof in its entirety and by substituting in lieu thereof the following:

## "CHAPTER 37. DELAWARE CONSUMER CREDIT INSURANCE MODEL ACT.

## § 3701. Purpose

The purpose of this Act is to promote the public welfare by regulating consumer credit insurance. Nothing in this Act is intended to prohibit or discourage reasonable competition. The provisions of this Act shall be liberally construed.

## § 3702. Scope and Definitions

## (a) Citation and Scope

(1) This Act may be cited as the 'Delaware Consumer Credit Insurance Model Act'.

(2) All consumer credit insurance issued or sold in connection with loans or other credit transactions for personal, family or household purposes shall be subject to the provisions of this Act, except:

a. Insurance written in connection with a credit transaction that is:

1. Secured by a first mortgage or deed of trust; and
2. Made to finance the purchase of real property or the construction of a dwelling thereon, or to refinance a prior credit transaction made for such a purpose;

b. Insurance sold as an isolated transaction on the part of the insurer and not related to an agreement or a plan for insuring debtors of the creditor

c. Insurance for which no identifiable charge is made to the debtor

d. Insurance written in connection with a credit transaction where the initial term exceeds ten years. Consumer credit insurance forms and premium rates approved for use with credit transactions of ten years or less may be used for long term transactions, if the term of the insurance does not exceed ten years.

## (b) Definitions

For the purpose of this Act:

(1) 'Commissioner' means the insurance supervisory authority of the state;

- (2) 'Consumer credit insurance' is a general term used in this Act to refer to any or all of credit life insurance, credit accident and health insurance, or any other insurance specifically defined in this Act;
- (3) 'Credit accident and health insurance' means insurance on a debtor or debtors to provide indemnity for payments or debt becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy;
- (4) 'Credit life insurance' means insurance on a debtor or debtors, pursuant to or in connection with a specific loan or other credit transaction, to provide for satisfaction of a debt, in whole or in part, upon the death of an insured debtor;
- (5) 'Credit transaction' means any transaction by the terms of which the repayment of money loaned or loan commitment made, or payment for goods, services or properties sold or leased, is to be made at a future date or dates;
- (6) 'Creditor' means the lender of money or vendor or lessor of goods, services or property, rights or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of any such lender, vendor, or lessor, and an affiliate, associate or subsidiary of any of them or any director, officer or employee of any of them or any other person in any way associated with any of them;
- (7) 'Debtor' means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction;
- (8) 'Gross debt' means the sum of the remaining payments owed to the creditor by the debtor;
- (9) 'Identifiable charge' means a charge for a type of consumer credit insurance that is made to debtors having such insurance and not made to debtors not having such insurance; it includes a charge for insurance that is disclosed in the credit or other instrument furnished to the debtor which sets out the financial elements of the credit transaction and any difference in the finance, interest, service, or other similar charge made to debtors who are in like circumstances except for the insured or non-insured status of the debtor or of the property used as security for the credit transaction.
- (10) 'Open-end credit' means credit extended by a creditor under an agreement in which:
  - a. The creditor reasonably contemplates repeated transactions;
  - b. The creditor imposes a finance charge from time to time on an outstanding unpaid balance; and
  - c. The amount of credit that may be extended to the debtor during the term of the agreement (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

§ 3703. Types of Consumer Credit Insurance

The types of consumer credit insurance defined in § 3702 may be written separately or in combination with other types of consumer credit insurance on an individual policy or group policy basis.

§ 3704. Amount of Consumer Credit Insurance

- (a) Credit Life Insurance

- (1) The initial amount of credit life insurance shall not exceed the total amount repayable under the credit transaction, which is the gross debt.
  - (2) In cases where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater.
  - (3) Notwithstanding the provisions of paragraph (1) or (2) above, insurance on agricultural credit transactions not exceeding 2 years in duration may be written up to the amount of the loan commitment on a nondecreasing or level term plan.
  - (4) Notwithstanding the provisions of paragraphs (1) and (2) above, or any other subsection, insurance on educational credit transaction commitments may be written for the amount of the portion of such commitment that has not been advanced by the creditor.
- (b) Credit Accident and Health Insurance:
- (1) The total amount of periodic indemnity payable by credit accident and health insurance in the event of disability as defined in the policy shall not exceed the aggregate of the periodic scheduled unpaid installments of the gross debt; and the amount of each periodic indemnity payment shall not exceed the original gross debt divided by the number of periodic installments.
  - (2) Notwithstanding the provisions of paragraph (1) above, for credit accident and health insurance written in connection with an open-end credit agreement, the amount of insurance shall not exceed the gross debt which would accrue on that amount using the periodic indemnity. Subject to any policy maximums, the periodic indemnity must not be less than the creditor's minimum repayment schedule.

§ 3705. Term of Consumer Credit Insurance

(a) Effective Date of Coverage

- (1) For consumer credit insurance made available to and elected by the debtor before or contemporaneous with a credit transaction to which the insurance relates, the term of the insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor except that when evidence of individual insurability is required and such evidence is furnished more than thirty (30) days after the date when the debtor becomes obligated to the creditor, the term of the credit insurance may commence on the date on which the insurance company determines the evidence to be satisfactory.
- (2) For insurance coverage made available to and elected by the debtor on a date subsequent to the date of the consumer credit transaction to which the insurance relates, the insurance shall, subject to acceptance by the insurer, commence on a date not earlier than the date the election is made by the debtor not later than thirty (30) days following the date on which the insurance company accepts the risk for coverage, according to an objective method such as one related to a particular date within a billing or repayment cycle or a calendar month.
- (3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, when a group policy provides coverage with respect to debts existing on the policy effective date, the insurance relating to the debt shall not commence before the effective date of the group policy.

- (4) In no event shall a charge for insurance be made to the debtor and retained by the creditor or insurer for any time prior to commencement of the consumer credit insurance to which the charge is related.

(b) Termination Date of Coverage

- (1) The term of any consumer credit insurance shall not extend beyond the termination date specified in the policy. The termination date of insurance may precede, coincide with, or follow the scheduled maturity date of the debt to which it relates, subject to any other requirements and restrictions of this Act.
- (2) The term of any consumer credit insurance shall not extend more than fifteen (15) days beyond the scheduled maturity date of the debt except when extended without additional cost to the debtor or except when extended pursuant to a written agreement, signed by the debtor, in connection with a variable interest rate credit transaction or a deferral, renewal, refinancing, or consolidation of debt.
- (3) If the debt is discharged due to renewal, refinancing or consolidation prior to the scheduled termination date of the insurance, any insurance in force shall be terminated before any new insurance may be written in connection with the renewed, refinanced, or consolidated debt.
- (4) In all cases of termination of insurance prior to the scheduled termination of the insurance, an appropriate refund or credit to the debtor shall be made of any unearned insurance charge paid by the debtor for a term of insurance after the date of the termination, except that no refund is required of a charge made for insurance if the insurance is terminated by performance of the insurer's obligation with respect to the insurance.
- (5) An insured debtor may terminate consumer credit insurance at any time by providing advance request to the insurer. The individual policy or group certificate may require that the request be in writing or that the debtor surrender the individual policy or group certificate, or both. The debtor's right to terminate coverage may also be subject to the terms of the credit transaction contract.

§ 3706. Disclosure to Debtors and Provisions of Policies and Certificates of Insurance

- (a) Pre-purchase disclosure. Before the debtor elects to purchase consumer credit insurance in connection with a credit transaction, the following shall be disclosed to the debtor *in writing* or as provided for in subsection (b):
  - (1) That the purchase of consumer credit insurance is optional and not a condition of obtaining credit approval;
  - (2) If more than one kind of consumer credit insurance is being made available to the debtor, whether the debtor can purchase each kind separately or the multiple coverage only as a package;
  - (3) The conditions of eligibility;
  - (4) That within the first thirty (30) days after receiving the individual policy or group certificate, the debtor may cancel the coverage and have all premium paid by the debtor refunded or credited. Thereafter, the debtor may cancel the policy at any time during the term of the loan and receive a refund of any of the unearned premium. However, only in those instances where insurance is a requirement for the extension of credit, the debtor may be required to offer evidence of alternative insurance acceptable to the creditor at the time of cancellation;

- (5) A brief description of the coverage.
- (b) The disclosure required in § 3706(a) shall be provided in the following manner:
    - (1) In connection with consumer credit insurance offered contemporaneously with the extension of credit or offered through direct mail advertisements, disclosure shall be made in writing and presented to the consumer in a clear or conspicuous manner;
    - (2) In conjunction with the offer of credit insurance subsequent to the extension of credit by other than direct mail advertisements, disclosure may be provided orally so long as written disclosures are provided to the debtor no later than the earlier of:
      - a. Ten (10) days after the offer, or
      - b. The date any other written material is provided to the debtor.
  - (c) All consumer credit insurance shall be evidenced by an individual policy or a group certificate of insurance which shall be delivered to the debtor.
  - (d) The individual policy or group certificate shall, in addition to other requirements of law, set forth the following:
    - (1) The name and home office address of the insurer;
    - (2) The name or names of the debtor or debtors, or in the case of a group certificate, the identity by name or otherwise of the debtor or debtors;
    - (3) The premium or amount of payment by the debtor separately for each kind of coverage or for all coverages in a package, except that for open-end loans, the premium rate and the basis of premium calculation (e.g., average daily balance, prior monthly balance) shall be specified;
    - (4) A full description of the coverage or coverages including the amount of term thereof, and any exceptions, limitation and exclusions;
    - (5) A statement that the benefits shall be paid to the creditor to reduce or extinguish the unpaid debt and, whenever the amount of insurance benefit exceeds the unpaid debt that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor, or the debtor's estate.
  - (e) Unless the individual policy or group certificate of insurance is delivered to the debtor at the time the debt is incurred, or at such other time that the debtor elects to purchase coverage, a copy of the application for the policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name or names of the debtor, the premium rate or amount of payment by the debtor for the insurance, the amount of payment by the debtor for the insurance and the amount, term, and a brief description of the coverage provided, shall be delivered at the time the debt is incurred or the election to purchase coverage is made. The copy of the application for, or notice of proposed insurance, shall also refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale, or other credit statement of account, instrument or agreement, unless the information required by this subsection is prominently set forth therein. Upon acceptance of the insurance by the insurer and within thirty (30) days of the date upon which the debt is incurred or the election to purchase coverage is made, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as provided in § 3705.

- (f) The application, notice of proposed insurance, or certificate may be used to fulfill all of the requirements of subsection (a) and subsection (d) if it contains all of the information required by those subsections.
- (g) The debtor has thirty (30) days from the date that he or she receives either the individual policy or the group certificate to review the coverage purchased. At any time within the thirty (30) days period, the debtor may contact the creditor or insurer issuing the policy or certificate and request that the coverage be canceled. The individual policy or group certificate may require the request to be in writing or that the policy or certificate be returned to the insurer or both. The debtor shall, within thirty (30) days of the request, receive a full refund or credit of all premiums or insurance charges paid by the debtor, provided no loss has occurred and no claim has been made.
- (h) If the named insurer does not accept the risk, the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged, and, if the amount of premium is less than that set forth in the notice or proposed insurance, an appropriate refund shall be made within thirty (30) days. If no insurer accepts the risk, then all premiums paid shall be refunded or credited within thirty (30) days of application to the person entitled thereto.
- (i) For the purpose of subsection (e) of this section, an individual policy or group certificate delivered in conjunction with an open-end consumer credit agreement or any consumer credit insurance requested by the debtor after that date of the debt shall be deemed to be delivered at the time the debt is incurred or election to purchase coverage is made if the delivery occurs within thirty (30) days of the date the insurance is effective.
- (j) An individual policy or group certificate delivered in conjunction with an open-end credit agreement shall continue from its effective date through the term of the agreement unless the individual policy or group certificate is terminated in accordance with its terms at an earlier date.

§ 3707. Filing, Approval, and Withdrawal of Forms

- (a) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the Commissioner before being used.
- (b) The Commissioner shall within thirty (30) days after the filing of any such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders, disapprove any such form if the benefits provided are not reasonable in relation to the premium charged, or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of the Insurance Code or of any rule or regulation promulgated thereunder. If the Commissioner does not disapprove a filing within thirty (30) days, it may be deemed approved.
- (c) If the Commissioner disapproves the form in accordance with subsection (b) of this section, the Commissioner shall promptly notify the insurer in writing of the disapproval, and it is unlawful for the insurer to issue or use the form. In the notice, the Commissioner shall specify the reasons for disapproval and state that a hearing will be granted upon written request by the insurer.
- (d) The Commissioner may withdraw approval of any approved form when the Commissioner would be required to disapprove the form if it were filed at the time of the action of withdrawal. The withdrawal shall be in writing and shall specify the reasons for the withdrawal and the effective date of the withdrawal. Any insurer adversely affected by such withdrawal may, within thirty (30) days after receiving

the written notification of the withdrawal, request a hearing to determine whether the withdrawal should be annulled, modified, or confirmed. Unless the Commissioner in writing in the withdrawal or subsequent thereto grants an extension, the withdrawal shall, in the absence of a request for a hearing, become effective, prospectively and not retroactively, on the ninety-first (91st) day following the delivery of the notice of withdrawal, and; if request for hearing is filed, on the ninety-first (91st) day following delivery of written notice of the Commissioner's determination.

- (e) Any hearing requested pursuant to §§ 3707(c) and 3707(d) above shall be noticed and conducted in accordance with the Delaware Administrative Procedures Act, Chapter 101 of Title 29.
- (f) If a group policy of consumer credit insurance
  - (1) Has been delivered in this state before the effective date of this Act; or
  - (2) Has been or is delivered in another state before or after the effective date of this Act then the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this state as specified in subsections (c) and (e) of § 3706 of this Act and such forms shall be approved by the Commissioner if they conform with the requirements specified in these subsections and if the schedules of premium rates applicable to the insurance evidenced by such certificate or notice are not in excess of the insurer's schedules of premium rates filed with the Commissioner; provided, however, the premium rate in effect on existing group policies may be continued until the first policy anniversary date following the date of this Act becomes operative as provided in § 3713. However, all other forms specified in § 3707(a) shall also be filed as specified in this section unless the group policy has been or is delivered in another state which has adopted statutes, regulations, or other provisions similar to this statute. In that event, the forms should be filed for informational purposes. However, the insurer shall be prohibited from using any form filed for informational purposes if the Commissioner subsequently determines that the form is not in substantive compliance with the requirements of this statute.

§ 3708. Premiums and Refunds

- (a) Any insurer may revise its schedules of premium rates from time to time, and shall file the revised schedules with the Commissioner. No insurer shall issue any consumer credit insurance policy for which the premium rate exceeds that determined by the schedules of the insurer as then on file with the Commissioner. The Commissioner shall have the authority to promulgate regulations to assure that the premium rates are reasonable in relation to the benefits provided. In determining whether the premium rates are reasonable in relation to the benefits provided, the Commissioner shall consider and provide for: actual and expected loss experience, general and administrative expenses, loss settlement and adjustment expenses, reasonable creditor compensation, investment income, the manner in which premiums are charged, and other acquisition costs, reserves, taxes, regulatory license fees and fund assessments, reasonable insurer profit and other relevant data, consistent with generally accepted actuarial standards.
- (b) Each individual policy or group certificate shall provide for a refund in the event of termination of the insurance prior to the scheduled maturity date of the insurance and upon notice to the insurer. The refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto; provided, however, that the Commissioner shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing such refund shall be filed with and approved by the Commissioner.
- (c) If a creditor requires a debtor to make any payment for consumer credit insurance and an individual policy or group certificate of insurance is not issued, the creditor

shall immediately give written notice to the debtor and shall promptly make an appropriate credit to the account or issue a refund.

- (d) The amount charged to a debtor for any consumer credit insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.
- (e) The insurance premium or other identifiable charge for credit life or credit accident and health insurance may be collected from the insured or included in the principal of any loan or other transaction at the time such transaction is completed.
- (f) The premium or cost of credit life or credit accident and health insurance when issued through any creditor shall not be deemed interest or charges, or consideration, or an amount in excess of permitted charges in connection with the loan or other credit transaction, and any gain or advantage to the creditor arising out of the premium or commission or dividend from the issuance of such insurance shall not be deemed a violation of any other law, general or special, civil or criminal of the State.

§ 3709. Issuance of Policies

All policies of consumer credit insurance shall be delivered or issued for delivery in this state only by an insurer authorized to engage in the business of insurance therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner.

§ 3710. Claims

- (a) All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.
- (b) All claims shall be paid either by draft drawn upon the insurer, by electronic funds transfer, or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified.
- (c) No plan or arrangement shall be used whereby any person, firm, or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims; provided that a group policyholder may, by arrangement with the group insurer, draw drafts, checks, or electronic transfers in payment of claims due to the group policyholder subject to audit and review by the insurer.

§ 3711. Existing Insurance - Choice of Insurer

When consumer credit insurance is required as additional security for any debt, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by the debtor or of procuring and furnishing the required coverage through any insurer authorized to transact any insurance business within this state.

§ 3712. Duties of an Insurer

Except as otherwise prohibited by law, duties imposed upon an insurer within this Act may be carried out by a creditor if the creditor is acting as a common law or statutory agent on behalf of the insurer.

§ 3713. Enforcement; Penalties.

- (a) The Commissioner may, after notice and hearing, issue such rules and regulations as the Commissioner deems appropriate for the supervision of this Act.
- (b) Whenever the Commissioner finds that there has been a violation of this Act or any rules or regulations issued pursuant thereto, and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the Commissioner, the Commissioner may impose an administrative penalty in accordance with § 334 of this title. The Commissioner, in his or her discretion, may revoke or suspend the license or certificate of authority of the person, firm, or corporation guilty of repeated willful violations.
- (c) Before the Commissioner may impose or order a penalty pursuant to this section, the violator shall be given notice of the violation and an opportunity to be heard at a public hearing. The procedures for such notice and hearing, and any appeal from the Commissioner's decision shall be the same as set forth in the Delaware Administrative Procedures Act, Chapter 101 of Title 29, Delaware Code.
- (d) The Commissioner may set forth by regulation prima facie reasonable premium rates, together with corresponding safe-harbor benefit provisions, which premium rates shall be conclusively presumed reasonable in relation to the benefits provided when used for policies containing such benefit provisions."

Section 2. Severability Provision. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to any person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 3. Effective Date. This Act shall be effective one hundred twenty (120) days after it has been signed by the Governor.

Approved July 25, 1996

#### CHAPTER 577

#### FORMERLY

#### HOUSE BILL NO. 657

#### AS AMENDED BY SENATE AMENDMENT NO. 1

#### AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CRIMINAL BACKGROUND CHECKS FOR CHILD CARE PROVIDERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 8561(a) of Title 11 of the Delaware Code by deleting the phrase "conviction data" in the first sentence and by inserting in lieu thereof the phrase "criminal history record".

Section 2. Amend Section 8561(b) of Title 11 of the Delaware Code by deleting the phrase "criminal conviction data" and by inserting in lieu thereof the phrase "the entire criminal history record".

Section 3. Amend Section 8561(b)(3) of Title 11 of the Delaware Code by deleting the phrase "Upon request from the" and by inserting in lieu thereof the word "The".

Section 4. Amend Section 8561(c) of Title 11 of the Delaware Code by deleting the phrase "conviction data" and by inserting in lieu thereof the phrase "criminal history record".

Section 5. Amend Section 8560(4) of Title 11 of the Delaware Code by deleting Section 8560(4) in its entirety.

Section 6. Amend Section 8560(5) of Title 11 of the Delaware Code by striking the numerical designation "(5)", and substituting in lieu thereof the numerical designation "(4)".

Approved July 25, 1996

CHAPTER 578

FORMERLY

HOUSE BILL NO. 314  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND PART VII, TITLE 16 OF THE DELAWARE CODE RELATING TO ELEVATORS, PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Amend Part VII, Title 16 of the Delaware Code by adding thereto a new Chapter 87, to read as follows:

"CHAPTER 87 Elevators

§ 8701. Emergency Communication.

(a) Every elevator which is used to transport people shall have some means for its passengers to communicate directly to a person outside the elevator in an emergency; such means shall be available on a 24-hour basis.

(b) This section shall not apply to any private residence.

(c) Each county or municipality may adopt rules or regulations to effectuate this section.

§ 8702. Compliance; penalties

(a) Every elevator subject to this section shall have six months from the effective date of this legislation to comply with the provisions hereof.

(b) No certificate of occupancy shall be issued to any building not exempt from this section containing an elevator that does not comply with this section, and no permit or license to operate an elevator subject to this section shall be issued or renewed if such elevator does not comply with this section.

(c) The owner of any elevator subject to this section that does not comply with this section shall be fined \$1,000 for each one year, or part thereof, for which such noncompliance exists."

Approved July 25, 1996

## CHAPTER 579

## FORMERLY

## HOUSE BILL NO. 475

AN ACT TO AMEND CHAPTER 9 OF TITLE 7 OF THE DELAWARE CODE RELATING TO THE SALE OF FOOD FISH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 913, Title 7, Delaware Code, by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by adding thereto a new subsection (f) to read as follows:

“(f) No individual shall sell, trade and/or barter or attempt to sell, trade, and/or barter any food fish taken with food fishing equipment for which a food fishing equipment permit has been issued to a recreational finfisherman.”

Section 2. Amend § 913(g), Title 7, Delaware Code, as amended, by striking the phrase “or (d)” and substituting in lieu thereof the phrase “(d) or (f)”.

Approved July 25, 1996

## CHAPTER 580

## FORMERLY

## HOUSE BILL NO. 571

AN ACT TO AMEND CHAPTER 21, TITLE 21 OF THE DELAWARE CODE RELATING TO THE NUMBER OF PLATES FOR MANUFACTURERS AND DEALERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2124(f), Chapter 21, Title 21 of the Delaware Code, by adding the following sentences to the end thereof:

“Dealer license plates will be limited to dealerships based on the number of vehicles sold per year. Dealers selling 5 to 10 vehicles per year may obtain no more than one (1) dealer plate; dealers selling 11-25 vehicles per year may obtain no more than two (2) dealer plates; dealers selling 26-49 vehicles per year may obtain no more than four (4) dealer plates; dealers selling 50-99 vehicles per year may obtain no more than five (5) dealer plates; dealers selling 100 or more vehicles per year may obtain any number of dealer plates at the dealer's discretion.”

Section 2. Any dealer possessing dealer plates in excess of the limits established by this Act shall surrender such excess plates to the Division no later than December 31, 1997. The Division may establish procedures for dealers to follow to accomplish the requirements of this Act.

Approved July 25, 1996

CHAPTER 581

FORMERLY

HOUSE BILL NO. 592

AN ACT TO AMEND CHAPTER 43, TITLE 11 OF THE DELAWARE CODE RELATING TO GOOD TIME CREDIT FOR PRISONERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 4382 of Title 11 of the Delaware Code by redesignating subsection (c) thereof as subsection (d), and by adding thereto a new subsection (c) to read as follows:

"(c) Any person subject to the custody of the Department who is determined to have physically assaulted any correctional officer or employee of the Department shall, in addition to any criminal or civil penalties which may be imposed, forfeit all good time accumulated to date of the assault; this forfeiture is not subject to suspension."

Approved July 25, 1996

## CHAPTER 582

## FORMERLY

## HOUSE BILL NO. 683

## AS AMENDED BY HOUSE AMENDMENT NOS. 1, 2 AND 4

AN ACT TO AMEND CHAPTER 53, TITLE 24 OF THE DELAWARE CODE AND CHAPTERS 88 AND 101, TITLE 29 OF THE DELAWARE CODE RELATING TO MASSAGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Title 24 of the Delaware Code by striking Chapter 53 in its entirety and substituting in lieu thereof the following:

“CHAPTER 53. MASSAGE AND BODYWORK

Subchapter 1. Board of Massage and Bodywork

§5301. Objectives.

The primary objective of the Board of Massage and Bodywork, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by this Chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered.

The secondary objectives of the Board are to maintain minimum standards of practitioner competency, and, to maintain certain standards in the delivery of services to the public. In meeting its objectives the Board shall develop standards assuring professional competence; shall monitor complaints brought against practitioners regulated by the Board; shall adjudicate at formal hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against practitioners, both licensed or certified, or formerly licensed or certified.

§5302. Definitions.

The following words, terms and phrases, when used in this Chapter shall have the meanings ascribed to them under this Section, except where the context clearly indicates a different meaning:

(1) ‘Board’ shall mean the State Board of Massage and Bodywork established in this Chapter.

(2) ‘Division’ shall mean the Division of Professional Regulation of the Department of Administrative Services of Delaware.

(3) ‘Massage and bodywork therapist’ shall mean a person who represents himself or herself to the public by any title or description of services incorporating the words ‘bodywork,’ ‘massage,’ ‘massage therapist,’ ‘massage therapy,’ ‘massage practitioner,’ ‘massagist,’ ‘masseur,’ ‘masseur,’ or who engages in the practice of massage and bodywork for a fee, monetary or otherwise.

(4) ‘Massage technician’ shall mean a person, who is certified with the Board to perform certain functions within the practice of massage therapy, and who is authorized by the Board to use any title or description of services incorporating the words ‘bodywork,’ ‘massage,’ ‘massage practitioner,’ ‘massagist,’ ‘masseur,’ ‘masseur,’ or certified massage technician’ but shall be prohibited from using the words ‘therapist’ or ‘therapy’.

(5) 'Person' shall mean a corporation, company, association and partnership, as well as an individual.

(6) 'Practice of massage and bodywork' shall mean a system of structured touch applied to the superficial or deep tissue, muscle, or connective tissue, by applying pressure with manual means. Such application may include, but is not limited to, friction, gliding, rocking, tapping, kneading, or nonspecific stretching, whether or not aided by massage oils or the application of hot and cold treatments. The practice of massage and bodywork is designed to promote general relaxation, enhance circulation, improve joint mobilization and/or relieve stress and muscle tension, and to promote a general sense of well-being.

The practice of massage and bodywork excludes actions by any person, who is certified or licensed in this State by any other law, and who is engaged in the profession or occupation for which he or she is certified or licensed; and actions by any person engaged in an occupation which does not require a certificate or certification, including, but not limited to, physical education teachers, athletic coaches, health or recreation directors, instructors at health clubs or spas, martial arts, water safety and dance instructors, or coaches and practitioners of techniques, who are acting within the scope of activity for which they are trained; or students of massage who are practicing within the scope of their course of study.

(7) 'State' means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam; except that 'this State' means the State of Delaware.

§5303. Board of Massage and Bodywork; appointments; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a state Board of Massage and Bodywork, which shall administer and enforce this Chapter.

(b) The Board shall consist of 7 members appointed by the Governor, who are residents of this state: Two of whom shall be massage and bodywork therapists licensed under this Chapter; two shall be massage technicians, certified under this Chapter; and three shall be members of the public. The public members shall not be, nor ever have been, massage and bodywork therapists, massage technicians, nor members of the immediate family of a massage and bodywork therapist or massage technician; shall not have been employed by a massage and bodywork therapist or massage technician; shall not have a material interest in the providing of goods and services to massage and bodywork therapists or massage technicians; nor have been engaged in an activity directly related to massage. The public members shall be accessible to inquiries, comments and suggestions from the general public.

(c) Except as provided in subsection (d) of this Section, each member shall serve a term of 3 years, and may succeed himself or herself for one additional term, provided, however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only one additional full term. Any person appointed to fill a vacancy on the Board shall hold office for the remainder of the unexpired term of the former member. Each term of office shall expire on the date specified in the appointment; however, the Board member shall remain eligible to participate in Board proceedings unless and until replaced by the Governor.

(d) A person who has never served on the Board may be appointed to the Board for 2 consecutive terms; but, no such person shall thereafter be eligible for 2 consecutive appointments to the Board. No person, who has been twice appointed to the Board or who has served on the Board for six years within any 9-year period, shall again be appointed to the Board until an interim period of at least 1 year has expired since such person last served.

(e) Members of the initial Board shall be appointed by the Governor such that one massage and bodywork therapist, one massage technician, and one public member shall serve a term of 3 years; one massage and bodywork therapist, one massage technician and one public member shall serve a term of 2 years; and one public member shall serve a term of 1 year.

(f) Any act or vote by a person appointed in violation of this Section shall be invalid. An amendment or revision of this Chapter is not sufficient cause for any appointment or attempted

appointment in violation of subsection (d) of this Section, unless such an amendment or revision amends this Section to permit such an appointment.

(g) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetency or neglect of duty. A member subject to disciplinary hearing shall be disqualified from Board business until the charge is adjudicated or the matter is otherwise concluded. A Board member may appeal any suspension or removal to the Superior Court.

(h) No member of the Board, while serving on the Board, shall hold elective office in any professional association of massage or bodywork practitioners.

(i) The provisions set forth for 'employees' in Chapter 58, Title 29 of the Delaware Code shall apply to all members of the Board, and to all agents appointed or otherwise employed by the Board.

(j) Any member who is absent without adequate reason for 3 consecutive meetings, or fails to attend at least half of all regular business meetings during any calendar year, shall be guilty of neglect of duty and automatically shall be considered to have resigned from the Board.

(k) Each member of the Board shall be reimbursed, according to Division policy, for all expenses involved in each meeting, including travel; and, in addition, shall receive not more than \$50 for each meeting attended but not more than \$500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

§5304. Organization; meetings; officers; quorum.

(a) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such times as the President deems necessary; or, at the request of a majority of the Board members.

(b) The Board shall elect, in the same month of each year, a president, vice-president and secretary. Each officer shall serve for 1 year, and may succeed himself or herself for one additional term.

(c) A majority of the members shall constitute a quorum for the purpose of transacting business. A quorum of four members of the Board is required to certify and license applicants, or to suspend or revoke a license. All other actions will be by simple majority vote.

(d) Minutes of all meetings shall be recorded, and copies shall be maintained by the Division. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared shall be made. The expense of preparing any transcript shall be incurred by the person requesting it.

§5305. Records.

The Division shall keep a register of all approved applications for license as massage and bodywork therapist and for certification as massage technician, and complete records relating to meetings of the Board, examinations, rosters, changes and additions to the Board's rules and regulations, complaints, hearings and such other matters as the Board shall determine. Such records shall be prima facie evidence of the proceedings of the Board.

§5306. Powers and duties.

(a) The Board of Massage and Bodywork shall have authority to:

(1) Formulate rules and regulations, with appropriate notice to those affected; all rules and regulations shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act of this State. Each rule or regulation shall implement or clarify a specific Section of this Chapter.

(2) Designate the application form to be used by all applicants, and process all applications;

(3) Designate the written examination to be taken by all persons applying for licensure as massage and bodywork therapists, subject to approval by the Director of the Division; applicants who qualify for licensure as massage and bodywork therapists by reciprocity shall have achieved a passing score on the written examination. Those practitioners currently certified in this State who have successfully passed the written examination shall not be required to retake the written examination when applying for licensure as massage and bodywork therapists.

(4) If the examination is not otherwise available, to provide for the administration of all examinations, including notice and information to applicants. The Board shall adopt a nationally-prepared and administered massage and bodywork therapy examination, subject to approval by the Director of the Division;

(5) Evaluate the credentials of all persons applying for a license to practice massage and bodywork therapy in Delaware and of all persons applying for certification as massage technicians, in order to determine whether such persons meet the qualifications for licensing or certification set forth in this Chapter;

(6) Grant licenses to, and renew licenses and certifications of, all persons who meet the qualifications for licensure and/or renewal of licenses; and grant certificates to persons who meet the qualifications for massage technicians;

(7) Establish by rule and regulation continuing education standards required for license and certificate renewal;

(8) Evaluate certified records to determine whether an applicant for licensure or certification, who previously has been licensed, certified, or registered in another jurisdiction to practice massage and/or bodywork, has engaged in any act or offense that would be grounds for disciplinary action under this Chapter; and whether there are disciplinary proceedings or unresolved complaints pending against such applicants for such acts or offenses;

(9) Refer all complaints from licensees and the public concerning licensed massage and bodywork therapists and certified massage technicians, or concerning practices of the Board or of the profession, to the Division for investigation pursuant to §8810, Chapter 88 of Title 29 of the Delaware Code; and, assign a member of the Board to assist the Division in an advisory capacity with the investigation of the technical aspects of the complaint;

(10) Conduct hearings and issue orders in accordance with procedures established pursuant to this Chapter, Chapter 101 of Title 29 of the Delaware Code, and §8810, Chapter 88 of Title 29 of the Delaware Code. Where such provisions conflict with the provisions of this Chapter, this Chapter shall govern. The Board shall determine whether or not a massage and bodywork therapist or massage technician shall be subject to a disciplinary hearing, and if so, shall conduct such hearing in accordance with this Chapter and the Administrative Procedures Act.

(11) When it has been determined, after a disciplinary hearing, that penalties or sanctions should be imposed, to designate and impose the appropriate sanction or penalty after time for appeal has lapsed.

#### Subchapter II. License and Registration

##### §5307. License; certification required.

(a) No person shall engage in the practice of massage and bodywork therapy or hold himself or herself out to the public in this State as being qualified to practice massage and bodywork therapy; or use in connection with his or her name, or otherwise assume or use, any title or description conveying or tending to convey the impression that he or she is qualified to practice massage and bodywork therapy, unless such person has been duly licensed or certified under this Chapter. Massage and bodywork therapists may not treat the medically diagnosed conditions.

(b) Whenever a license to practice as a massage and bodywork therapist in this state has expired or been suspended or revoked, it shall be unlawful for the person to practice massage and bodywork therapy in this State.

(c) No person shall act as a massage technician, or hold himself or herself out as a massage technician, unless such person has been duly certified by the Board under this Chapter. Massage technicians shall practice massage and/or bodywork on other than medically diagnosed conditions.

§5308. Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as a massage and bodywork therapist under this Chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) has completed 500 hours of supervised in-class study as a student in a school which trains massage or bodywork therapists, or as a student in an approved program of massage or bodywork therapy; the school or program of training must include a curriculum of no less than:

(a) 100 hours of anatomy and physiology;

(b) 300 hours of technique and theory of massage or bodywork therapy;

(c) 100 hours of elective courses in the field of massage therapy;

(2) has achieved the passing score on a written, standardized, nationally-prepared and administered examination in massage or bodywork therapy; the passing score shall be as established by the testing agency. If the testing agency has not established a passing score, the Board in conjunction with the Division shall establish the passing score;

(3) has passed a state-certified examination in cardiopulmonary resuscitation (CPR) training; and possesses current CPR certification. An exception from current CPR certification shall be allowed for persons who have lower limb amputee status.

(4) has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this Chapter; and, has no disciplinary proceedings or unresolved complaints pending against him or her in any jurisdiction where the applicant has previously been or currently is licensed to practice massage and/or bodywork therapy.

(5) Foreign-trained applicants must provide evidence of training and supervision essentially comparable to that cited in paragraph (1).

(b) Where the Board has found to its satisfaction that an application has been intentionally fraudulent, or that false information has been intentionally supplied, it shall report its findings to the Attorney General for further action.

(c) Where the application of a person has been refused or rejected and such applicant feels that the Board has acted without justification; has imposed higher or different standards for him or her than for other applicants or licensees; or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

§5309. Qualifications of applicants for certification as massage technicians.

(a) An applicant who is applying for certification as a massage technician under this Chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person

(1) has completed, as a minimum, a 100-hour course of supervised in-class study of massage;

(2) has passed a state-certified examination in cardio-pulmonary resuscitation (CPR) training; and possesses current CPR certification. An exception from current CPR certification shall be allowed for persons who have lower limb amputee status; and

(3) has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this Chapter; and, has no disciplinary proceedings or unresolved complaints pending against him or her in any jurisdiction where the applicant previously has been or currently is licensed, certified, or registered as a massage technician or massage or bodywork therapist

(b) Where the Board has found to its satisfaction that an applicant has been intentionally fraudulent, or that false information intentionally has been supplied, it shall report its findings to the Attorney General for further action.

(c) Where the application of a person has been refused or rejected and such applicant feels that the Board has acted without justification; has imposed higher or different standards for him or her than for other applicants or licensees; or has in some way contributed to or caused the failure of such application, the applicant may appeal to the Superior Court

§5310. Reciprocity.

Where an applicant is currently licensed or certified as a massage and/or bodywork therapist or massage technician, or is licensed or certified under any other title which indicates such person practices massage and/or bodywork, in another jurisdiction, and has practiced continually for two years in that jurisdiction, in lieu of all other requirements for licensure and certification under this Chapter, the Board shall accept a certificate or other evidence that the applicant is currently licensed or certified in that jurisdiction, has practiced continually for two years, and, in addition, for an applicant for licensure as massage and bodywork therapist, has achieved the passing score on the written national examination.

Upon receipt of an application from an applicant who has been or who currently is licensed, certified, or registered as a massage and/or bodywork therapist or massage technician in another jurisdiction, the applicant is responsible for contacting the licensing authority, or comparable agency, in such other jurisdiction(s) and requesting that a certified statement be sent directly to the Board by the licensing authority, which shall certify that there are no disciplinary proceedings or unresolved complaints pending against the applicant; and whether the applicant has engaged in any of the acts or offenses that would be grounds for disciplinary action under this Chapter. In the event that a disciplinary proceeding or unresolved complaint is pending, the applicant shall not be licensed until the proceeding or complaint has been resolved. Applicants for licensure to practice massage and bodywork therapy in this State shall be deemed to have given consent to the release of such information and to waive all objections to the admissibility of such evidence.

§5311. Fees.

The amount to be charged for each fee imposed under this Chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this Chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year, the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the coming year

§5312. Issuance and renewal of licenses, certification.

(a) The Board shall issue a license or certificate to each applicant who meets the requirements of this Chapter for licensure as a massage or bodywork therapist or certification as a massage technician and who pays the fee established under §5311 of this Title.

(b) Each license or certificate shall be renewed biennially, in such manner as is determined by the Division of Professional Regulation, and upon payment of the appropriate fee and submission of a renewal form provided by the Division of Professional Regulation, and proof that the licensee or certificant has met the continuing education requirements established by the Board.

(c) The Board, in its rules and regulations, shall determine the period of time within which a licensed massage or bodywork therapist or certified massage technician may still renew such license or certificate, notwithstanding the fact that such licensee or certificant has failed to renew on or before the renewal date.

§5313. Grounds for refusal, revocation or suspension of licenses and certificates.

(a) A practitioner licensed or certified under this Chapter shall be subject to disciplinary actions set forth in §5315 of this Title, if, after a hearing, the Board finds that the massage or bodywork therapist or massage technician:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a massage or bodywork therapist or certification as a massage technician; has impersonated another person holding a license or certification, or allowed another person to use the massage or bodywork license or massage technician certification, or aided or abetted a person not licensed as a massage or bodywork therapist or certified as a massage technician to represent that person as a massage or bodywork therapist or massage technician;

(2) Has been convicted of any felony or misdemeanor sexual offense under State law, federal law, or the law of another jurisdiction, and which has a rational connection with the applicant's or licensee's or certificate holder's fitness or capacity to practice the profession;

(3) Has excessively used or abused drugs (including alcohol, narcotics or chemicals);

(4) Has violated a lawful provision of this Chapter, or any lawful regulation established thereunder;

(5) Has had his or her license as a massage or bodywork therapist or his or her certificate as massage technician suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute one or more of the acts defined in this Chapter. Every person licensed as a massage or bodywork therapist or certified as a massage technician in this State shall be deemed to have given consent to the release of this information by the Board of Massage and Bodywork Therapy or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(7) Has failed to notify the Board that his or her license as a massage or bodywork therapist or certificate as massage technician in another state has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof.

(b) Where a practitioner fails to comply with the Board's request that the practitioner attend a hearing, the Board may petition the Superior Court to order such attendance, and the said Court or any judge assigned thereto shall have jurisdiction to issue such order.

(c) Subject to the provisions of this Chapter and subchapter IV of Chapter 101 of Title 29 of the Delaware Code, no license shall be restricted, suspended or revoked by the Board, and no practitioner's right to practice shall be limited by the Board, until such practitioner has been given notice and an opportunity to be heard in accordance with the Administrative Procedures Act.

§5314. Complaints.

A practitioner or member of the public desiring to file a complaint against a practitioner or licensee, or certificate holder regulated by the Board shall file a written complaint with the Division of Professional Regulation. All complaints shall be received and investigated by the Division in accordance with the procedures as specified in §8810 of Title 29. The Division shall be responsible for issuing a final written report at the conclusion of the investigation.

§5315. Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that any of the conditions or violations set forth in §5313 of this Title applies to a practitioner regulated by this Chapter.

(1) Issue a letter of reprimand;

(2) Publicly censure a practitioner;

(3) Place a practitioner on probationary status, and require the practitioner

to:

a. Report regularly to the Board upon the matters which are the basis of the probation;

b. Limit all practice and professional activities to those areas prescribed by the Board; and/or

c. Continue or renew the practitioner's professional education until the required degree of skill has been attained in those areas which are the basis of the probation;

(4) Suspend any practitioner's license or certification;

(5) Revoke a practitioner's license or certification.

(b) The Board may withdraw or reduce conditions of probation when it finds that the deficiencies which required such action have been remedied.

(c) The Board may temporarily suspend a practitioner's license or certification in advance of a final adjudication, during the appeals process, but only in cases where there is a clear and immediate danger to the health, safety and welfare of the public if the licensee or certificant is allowed to continue to practice. Such suspension may be appealed in accordance with the Administrative Procedures Act.

(d) Where a licensee or certificant has been suspended due to a disability of the licensee or certificant, the Board, at a Board meeting, may reinstate such licensee or certificant if the Board is satisfied that the licensee or certificant is able to practice with reasonable skill and safety.

(e) As a condition of reinstatement of a suspended license, or removal from probationary status, the Board may impose such disciplinary or corrective measures as are authorized under this Chapter.

§5316. Hearing procedures.

(a) If a complaint is filed with the Board pursuant to §8810 of Title 29 of the Delaware Code, alleging violation of §5313 of this Title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code.

(b) All hearings shall be informal without use of rules of evidence. If the Board finds, by a majority vote of all members, that the complaint has merit, the Board shall take such action permitted under this Chapter as it deems necessary. The Board's decision shall be in writing and

shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

(c) Where the practitioner is in disagreement with the action of the Board, the practitioner may appeal the Board's decision to the Superior Court within 30 days of service, or of the postmarked date of the copy of the decision mailed to the practitioner. Upon such appeal the Court shall hear the evidence on the record. Stays shall be granted in accordance with §10144 of Title 29 of the Delaware Code.

#### §5317. Penalties.

A person not currently licensed as a massage or bodywork therapist or certified as a massage technician, under this Chapter, when guilty of engaging in the practice of massage or bodywork therapy or of practicing as a massage technician, or using in connection with the practitioner's own name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the practitioner is qualified to practice massage or bodywork therapy, or to act as a massage technician, such offender shall be guilty of a misdemeanor. Upon the first offense, the practitioner shall be fined not less than \$100 nor more than \$500 for each offense. For a second or subsequent conviction, the fine shall be not less than \$500 nor no more than \$1,000 for each offense. Superior Court shall have jurisdiction over all violations of this Chapter."

Section 2. Amend paragraph (29), subsection (a), §8810, Chapter 88 of Title 29 of the Delaware Code by striking said paragraph (29) in its entirety, and by adding a new paragraph (29) to read as follows:

"(29) Board of Massage and Bodywork, as set forth in Chapter 53 of Title 24; and"

Section 3. Amend §10161, Chapter 101 of Title 29 of the Delaware Code by adding a new subsection (42) to read as follows:

"(42) Board of Massage and Bodywork."

Section 4. Amend §10161, Chapter 101 of Title 29 of the Delaware Code by renumbering current subsection (42) as new subsection (43) and renumbering each succeeding subsection accordingly.

#### Section 5. Rules and Regulations.

Rules and Regulations in effect on the date of enactment of this Act shall remain valid to the extent they are not inconsistent with this Act.

#### Section 6. Certification of existing state certified massage/bodywork practitioners.

Persons currently certified as massage/bodywork practitioners by the Committee on Massage/Bodywork Practitioners shall automatically be granted status as massage technicians, and during the pendency of their applications shall be permitted to continue in practice until such time as the Board takes action on each practitioner's application.

#### Section 7. Current members of the Committee on Massage/Bodywork Practitioners.

Members currently serving on the Committee on Massage/Bodywork Practitioners shall continue to serve unless or until replaced by the Governor. The Governor shall appoint new members to the Board to fulfill the requirements of §5304 of this Chapter.

#### Section 8. Severability.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act, which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

Approved July 25, 1996

CHAPTER 583

FORMERLY

SENATE BILL NO. 193  
AS AMENDED BY SENATE AMENDMENT NOS. 2 AND 3 AND  
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO CASUALTY  
INSURANCE CONTRACTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend § 3904(b), Title 18, Delaware Code, by deleting paragraph (3) thereof  
in its entirety and substituting in lieu thereof the following:

“(3) The excluded driver or drivers shall be required to furnish proof that the  
coverage required under Delaware law is carried with another company or through the  
Delaware Automobile Insurance Plan, or surrender his or her motor vehicle operator’s  
license within 30 days.”

Section 2. This Act shall sunset and expire 3 years after its enactment into law.

Approved July 25, 1996

shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

(c) Where the practitioner is in disagreement with the action of the Board, the practitioner may appeal the Board's decision to the Superior Court within 30 days of service, or of the postmarked date of the copy of the decision mailed to the practitioner. Upon such appeal the Court shall hear the evidence on the record. Stays shall be granted in accordance with §10144 of Title 29 of the Delaware Code.

§5317. Penalties.

A person not currently licensed as a massage or bodywork therapist or certified as a massage technician, under this Chapter, when guilty of engaging in the practice of massage or bodywork therapy or of practicing as a massage technician, or using in connection with the practitioner's own name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the practitioner is qualified to practice massage or bodywork therapy, or to act as a massage technician, such offender shall be guilty of a misdemeanor. Upon the first offense, the practitioner shall be fined not less than \$100 nor more than \$500 for each offense. For a second or subsequent conviction, the fine shall be not less than \$500 nor no more than \$1,000 for each offense. Superior Court shall have jurisdiction over all violations of this Chapter."

Section 2. Amend paragraph (29), subsection (a), §8810, Chapter 88 of Title 29 of the Delaware Code by striking said paragraph (29) in its entirety, and by adding a new paragraph (29) to read as follows:

"(29) Board of Massage and Bodywork, as set forth in Chapter 53 of Title 24; and"

Section 3. Amend §10161, Chapter 101 of Title 29 of the Delaware Code by adding a new subsection (42) to read as follows:

"(42) Board of Massage and Bodywork;".

Section 4. Amend §10161, Chapter 101 of Title 29 of the Delaware Code by renumbering current subsection (42) as new subsection (43) and renumbering each succeeding subsection accordingly.

Section 5. Rules and Regulations.

Rules and Regulations in effect on the date of enactment of this Act shall remain valid to the extent they are not inconsistent with this Act.

Section 6. Certification of existing state certified massage/bodywork practitioners.

Persons currently certified as massage/bodywork practitioners by the Committee on Massage/Bodywork Practitioners shall automatically be granted status as massage technicians, and during the pendency of their applications shall be permitted to continue in practice until such time as the Board takes action on each practitioner's application.

Section 7. Current members of the Committee on Massage/Bodywork Practitioners.

Members currently serving on the Committee on Massage/Bodywork Practitioners shall continue to serve unless or until replaced by the Governor. The Governor shall appoint new members to the Board to fulfill the requirements of §5304 of this Chapter.

Section 8. Severability.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act, which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

Approved July 25, 1996

CHAPTER 583

FORMERLY

SENATE BILL NO. 193  
AS AMENDED BY SENATE AMENDMENT NOS. 2 AND 3 AND  
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO CASUALTY  
INSURANCE CONTRACTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend § 3904(b), Title 18, Delaware Code, by deleting paragraph (3) thereof  
in its entirety and substituting in lieu thereof the following:

“(3) The excluded driver or drivers shall be required to furnish proof that the  
coverage required under Delaware law is carried with another company or through the  
Delaware Automobile Insurance Plan, or surrender his or her motor vehicle operator’s  
license within 30 days.”

Section 2. This Act shall sunset and expire 3 years after its enactment into law.

Approved July 25, 1996

CHAPTER 584  
FORMERLY  
SENATE SUBSTITUTE NO. 1  
FOR  
SENATE BILL 368

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO PROHIBITED  
TRADE PRACTICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Chapter 25, Title 6, Delaware Code by adding a new Subchapter IX  
thereto to read as follows:

"Subchapter IX. Charitable/Fraternal Solicitation

§ 2591. Short Title.

This subchapter may be cited as the 'Delaware Charitable/Fraternal Solicitation  
Act of 1996.'

§ 2592. Purpose.

The purpose of this Act is to safeguard the public against fraudulent and  
misleading charitable/fraternal solicitations, thereby enhancing public confidence in legitimate  
charitable/fraternal organizations.

§ 2593. Definitions.

As used in this subchapter unless the context otherwise requires:

(1) 'Charitable/fraternal organization' means any person who is or holds himself or  
herself out to be established (i) for any benevolent, educational, humane, scientific, patriotic,  
social welfare or advocacy, public health, environmental conservation, civic or philanthropic  
purpose, or (ii) for the benefit of law enforcement officers, firefighters or other persons who  
protect the public safety, or (iii) any organization otherwise subject to §501(C) of the Internal  
Revenue Code of 1986, as amended;

(2) 'Charitable/fraternal purpose' means (i) any benevolent, educational, humane,  
scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic  
or philanthropic objective, or (ii) an objective to benefit law enforcement officers, firefighters or  
other persons who protect the public safety;

(3) 'Charitable/fraternal solicitation' means any oral or written request, directly or  
indirectly, for money, credit, property, financial assistance or other thing of value on the plea or  
representation that such money, credit, property, financial assistance or other thing of value or  
any portion thereof, will be used for a charitable/fraternal purpose or the benefit of a  
charitable/fraternal organization. No actual contribution need be made in order for a  
charitable/fraternal solicitation to be deemed to have taken place.

(4) 'Contribution' means the grant, promise or pledge of money, credit, property,  
financial assistance or other thing of value in response to a charitable/fraternal solicitation.

(5) 'Person' means any individual, organization, corporation, government, or  
governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated  
association, limited liability company, limited liability partnership, two or more of any of the  
foregoing having a joint or common interest, or any other legal or commercial entity.

(6) 'Professional solicitor' means a person who, for financial consideration, solicits contributions for a charitable/fraternal purpose or on behalf of a charitable/fraternal organization, either personally or through agents or employees employed or designated for that purpose. The term does not include a charitable/fraternal organization or an officer, director, employee, member, or volunteer of a charitable/fraternal organization.

§ 2594. Records.

(a) Every professional solicitor shall keep accurate fiscal records regarding its charitable/fraternal solicitations in Delaware.

(b) There shall be a written contract between a professional solicitor and a charitable/fraternal organization that clearly states the respective obligations of the professional solicitor and the charitable/fraternal organization and the compensation terms of the professional solicitor.

(c) Every professional solicitor shall retain the records and the written contract required pursuant to this section for a least three years from the effective date of the termination of such contract.

(d) Every professional solicitor shall review the requirements of this Act prior to executing each written contract with a charitable/fraternal organization.

§ 2595. Unlawful Practices.

(a) The act, use, or employment by any person of any deception, fraud,

false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with the intent that others rely upon such concealment, suppression or omission in connection with a charitable solicitation, whether or not any person has in fact been misled, deceived or damaged thereby

(b) Such acts or practices shall include but are not limited to any one of the following:

(1) the failure of any person to identify himself or herself by name prior to making a charitable solicitation;

(2) the failure of a person to identify the charitable/fraternal organization for which the charitable/fraternal solicitation is being made or the charitable/fraternal purpose of the solicitation prior to making the solicitation;

(3) if the solicitation is made by a professional solicitor, the failure to disclose that the person soliciting the contribution is, or is employed by, a professional solicitor and the identity of the professional solicitor;

(4) upon request by the person being solicited, the failure of any person to disclose the amount/percentage of the contribution that will be turned over to the charitable/fraternal organization, the amount/percentage of the contribution to be used for the charitable/fraternal purposes for which it is being solicited, or the amount/percentage to be retained by the professional solicitor. To the extent the amount/percentage of the contribution to be turned over to the charitable/fraternal organization is not known at the time of the solicitation, the person shall disclose a good faith estimate of the percentage/amount of the contribution to be turned over to the charitable/fraternal organization; and

(5) the use or reference to the term "police", "law enforcement", "trooper", "rescue squad", "firemen", or "firefighter" unless (i) the person making such representations is employed by a bona fide police, law enforcement, rescue squad, or fire department and the person is authorized by such entity to engage in charitable solicitation, or (ii) such entity has authorized the use or reference to such term in writing for the purpose of charitable/fraternal solicitation;

(6) the representation that a percentage of the contribution will be used for a charitable/fraternal purpose if the person has reason to believe the contribution will not be used for a charitable/fraternal purpose;

(7) the representation that another person, as defined by § 2593(b)(5), endorses the solicitation unless such person has consented in writing to the use of the person's name for the purpose of endorsing the solicitation;

(8) the representation that the contribution is solicited on behalf of anyone other than the charitable/fraternal organization that authorized the solicitation in accordance with this subchapter;

(9) the use of the name of any charitable/fraternal organization without the written consent of the charitable/fraternal organization;

(10) the use of a name, symbol or statement so closely related or similar to that used by another charitable/fraternal organization or governmental agency that the use thereof would tend to confuse or mislead the public;

(11) the failure to create and/or maintain the records and written contracts as required by § 2594 of this Title with the intent to hinder the discovery of practices otherwise prohibited by this Act or having otherwise been in violation of this subsection; and

(12) the failure to comply with § 2596 on three separate occasions.

(c) No charitable/fraternal organization or any officer, director, member, volunteer or employee of a charitable/fraternal organization shall be deemed in violation of this section for an unlawful practice committed by a professional solicitor unless the charitable/fraternal organization or such officer, director, member, volunteer, or employee has actual prior knowledge of such unlawful practice or the charitable/fraternal organization or such officer, director, member, volunteer or employee had fraudulent intent in connection with the unlawful practice.

#### § 2596. Time Restriction.

No charitable/fraternal organization and/or professional solicitor shall engage in charitable/fraternal solicitation of any person after 9:00 p. m. or before 8 a. m., unless authorized by the person being solicited prior to the solicitation.

#### 2597. Enforcement and Remedies

(a) The Attorney General shall have the same authority in enforcing, remedying and otherwise carrying out the provisions of this subchapter as is provided by § 2517 of Title 29, and by §§ 2511-2527 and §§ 2531-2536 of Title 6.

(b) Any violation of § 2595 of this subchapter shall be deemed an unlawful practice in violation of § 2513 of this Title and willful violations of § 2595 of this subchapter shall be punishable in accordance with § 2513(e) and/or § 2581 of this Title.

(c) The remedies and penalties provided for in this subchapter are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions of law including but not limited to State and/or Federal criminal prosecutions and/or actions brought by private parties."

Section 2. This Act shall be effective 60 days after enactment.

Section 3. Severability Clause.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to that end the provisions of this Act are declared to be severable.

Approved July 25, 1996

## CHAPTER 585

## FORMERLY

SENATE BILL NO. 423  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER I OF TITLE 26 OF THE DELAWARE CODE IN ORDER TO ALLOW THE PUBLIC SERVICE COMMISSION TO DETERMINE THE APPROPRIATE MANNER FOR GIVING PUBLIC NOTICE OF MATTERS BEFORE IT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter I, § 102(7), Title 26, Delaware Code, by striking said subsection (7) in its entirety.

Section 2. Amend Subchapter I, § 102(8) and § 102(9), Title 26, Delaware Code, by striking the designation "(8)" and "(9)" from said subsections and renumbering those subsections "(7)" and "(8)", respectively.

Section 3. Amend Subchapter I, Title 26, Delaware Code, by adding, immediately after § 102, a new section numbered "102A" to read as follows:

"§ 102A. PUBLIC NOTICE.

In any matter or proceeding before the Commission, the Commission may decide the manner and method of giving notice to those persons affected by, likely to be affected by, or likely to be interested in the matter or proceeding. In making this determination, the Commission shall not be governed by the provisions for notice by publication set out in sections 10115(3) and 10124(1) of Title 29 of the Delaware Code. Instead, such notice may be made by:

- a. publication in one or more newspapers of general circulation;
- b. delivery, by mail or other means, of a written notice to those directly affected, such as ratepayers or subscribers;
- c. a combination of the above two procedures; or
- d. any other means which is reasonably likely to afford the affected and interested persons notice of the pendency of the matter so that they have the opportunity to present their views, such as the placement of a notice in a customer's bill.

In making its determination, the Commission may consider the nature of the proceedings, the number of persons affected or interested, the ability of alternative means to reach those affected and interested, and the comparative costs of the alternative methods. When, under this chapter, a public utility is required to give notice to the public, the Commission shall set the form and manner of such notice."

Section 4. Amend Subchapter III, § 304, Title 26, Delaware Code, by (1) striking the present third and fourth sentences in said subsection which begin "All proposed changes shall be published in a newspaper" and end with "as it may prescribe" and (2) substituting in lieu therefore new third and fourth sentences to read as follows:

"Public notice of all proposed changes shall be given in a form and manner set by the Commission. The Commission, for good cause shown, may allow changes in rates without requiring the 60 days notice and/or public notice under such conditions as it may prescribe."

Section 5. This law shall become effective upon enactment. The provisions in this act shall not affect the validity of any notice given in any matter or proceeding previously before, or currently pending before, the Public Service Commission.

Approved July 25, 1996

CHAPTER 586

FORMERLY

HOUSE BILL NO. 190  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 83, TITLE 9 OF THE DELAWARE CODE RELATING TO VALUATION OF LAND DEVOTED TO AGRICULTURE, HORTICULTURAL OR FOREST USE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 8337(b), Chapter 83, Title 9 of the Delaware Code by adding to the end thereof a new sentence to read as follows: "The formula used by the Committee shall be based on not less than the preceding 20 years of land values."

Approved July 25, 1996

## CHAPTER 587

## FORMERLY

HOUSE BILL NO. 589  
AS AMENDED BY HOUSE AMENDMENT NOS. 3 AND 4 AND  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 8, 9 AND 29 OF THE DELAWARE CODE RELATING TO ELIMINATING THE REQUIREMENT FOR THE RECORDATION OF, AND ENHANCING PUBLIC ACCESS TO, CORPORATION DOCUMENTS IN THE OFFICES OF THE RECORDERS OF DEEDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Section 101, Title 8, Delaware Code, by striking from subsection (a) thereof the words and punctuation ", filed and recorded", and substituting therefor the words "and filed".

Section 2. Amend Section 103 of Title 8, Delaware Code, by striking paragraph (c)(4) thereof in its entirety and by inserting a new paragraph (c)(4) to read as follows:

"(4) The Secretary of State, acting as agent for the recorders of each of the counties, shall collect and deposit in a separate account established exclusively for that purpose a county assessment fee with respect to each filed instrument, and shall thereafter weekly remit from such account to the recorder of each of the said counties the amount or amounts of such fees as provided for in paragraph (c)(5) of this section or as elsewhere provided by law. Said fees shall be for the purposes of defraying certain costs incurred by the counties in merging the information and images of such filed documents with the document information systems of each of the recorder's offices in the counties, and in retrieving, maintaining and displaying such information and images in the offices of the recorders and at remote locations in each of such counties. In consideration for its acting as the agent for the recorders with respect to the collection and payment of the county assessment fees, the Secretary of State shall retain and pay over to the general fund of the State an administrative charge of one percent of the total fees collected."

Section 3. Amend Section 103, Title 8, Delaware Code, by striking paragraph (c)(5) thereof in its entirety and by inserting a new paragraph in its place to read:

"(5) The assessment fee to the counties shall be \$24 for each one-page instrument filed with the Secretary of State in accordance with this section and \$9 for each additional page for instruments with more than one page. The recorder's office to receive the assessment fee shall be the recorder's office in the county in which the corporation's registered office in this State is, or is to be, located, except that an assessment fee shall not be charged for either a certificate of dissolution qualifying for treatment under § 391(a)(5)(b) of this title, or a document filed in accordance with subchapter XV of this title."

Section 4. Amend Section 103, Title 8, Delaware Code, by striking paragraph (c)(6) thereof in its entirety and inserting a new paragraph in its place to read:

"(6) The Secretary of State shall enter such information from each instrument as he deems appropriate into the Delaware Corporation Information System or any system which is a successor thereto in the office of the Secretary of state, and such information shall be permanently maintained. A copy of each instrument shall be permanently maintained on optical disk or by other suitable medium."

Section 5. Amend Section 103, Title 8, Delaware Code, by striking subsection (c) thereof in its entirety and by inserting a new subsection in its place to read:

“(e) If another section of this chapter specifically prescribes a manner of executing, acknowledging or filing a specified instrument or a time when such instrument shall become effective which differs from the corresponding provisions of this section, then such other section shall govern.”

Section 6. Amend Section 103, Title 8, Delaware Code, by striking from subsection (f) thereof the words and punctuation “. filed and recorded” wherever the same appears in said subsection, and substituting therefore the words “and filed”.

Section 7. Amend Section 105, Title 8, Delaware Code, by striking said section in its entirety and by inserting a new section in its place to read:

“§ 105. Certificate of incorporation and other certificates: evidence.

A copy of a certificate of incorporation, or a restated certificate of incorporation, or of any other certificate which has been filed in the office of the Secretary of State as required by any provision of this title shall, when duly certified by the Secretary of State, be received in all courts, public offices, and official bodies as prima facie evidence of:

- (1) Due execution, acknowledgment and filing of the instrument;
- (2) Observance and performance of all acts and conditions necessary to have been observed and performed precedent to the instrument becoming effective; and of
- (3) Any other facts required or permitted by law to be stated in the instrument.”

Section 8. Amend Section 133, Title 8, of the Delaware Code, by deleting the following words and punctuation from said section:

“. and a certified copy shall be recorded in the office of the recorder for the county in which the new office is located”.

Section 9. Amend Section 134, Title 8, Delaware Code, by deleting said section in its entirety and substituting therefor the following:

“§ 134. Change of address or name of registered agent.

(a) A registered agent may change the address of the registered office of the corporation or corporations for which he is a registered agent to another address in this State by filing with the Secretary of State a certificate, executed and acknowledged by such registered agent, setting forth the names of all the corporations represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such corporations, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the corporations recited in the certificate. Hereafter, or until further change of address, as authorized by law, the registered office in this State of each of the corporations recited in the certificate shall be located at the new address of the registered agent thereof as given in the certificate.

(b) In the event of a change of name of any person or corporation acting as registered agent in this State, such registered agent shall file with the Secretary of State a certificate, executed and acknowledged by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, the names of all the corporations represented by such registered agent and the address at which such registered agent has maintained the registered office for each of such corporations.”

Section 10. Amend Section 135, Title 8, Delaware Code, by deleting said section in its entirety and substituting therefor the following:

“§ 135. Resignation of registered agent coupled with appointment of successor.

The registered agent of one or more corporations may resign and appoint a successor registered agent by filing a certificate with the Secretary of State, stating the name and address of the successor agent, in accordance with paragraph (2) of subsection (a) of § 102 of this title. There shall be attached to such certificate a statement of each affected corporation ratifying and approving such change of registered agent. Each such statement shall be executed and acknowledged in accordance with § 103 of this title. Upon such filing, the successor registered agent shall become the registered agent of such corporations as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such corporation's registered office in this State. The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the corporations so ratifying and approving such change, and setting out the names of such corporations.”

Section 11. Amend Section 136, Title 8, Delaware Code, by striking said section in its entirety and substituting therefor the following:

“§ 136. Resignation of registered agent not coupled with appointment of successor.

(a) The registered agent of one or more corporations may resign without appointing a successor by filing a certificate of resignation with the Secretary of State; but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall be executed and acknowledged by the registered agent, shall contain a statement that written notice of resignation was given to each affected corporation at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the corporation at its address last known to the registered agent, and shall set forth the date of such notice.

(b) After receipt of the notice of the resignation of its registered agent, provided for in subsection (a) of this section, the corporation for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning in the same manner as provided in § 133 of this title for change of registered agent. If such corporation, being a corporation of this State, fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, the Secretary of State shall declare the charter of such corporation forfeited. If such corporation, being a foreign corporation, fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, the Secretary of State shall forfeit its authority to do business in this State.

(c) After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the corporation for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 321 of this title.”

Section 12. Amend Section 151, Title 8, Delaware Code, by deleting the words and punctuation “, recorded” in the first sentence of subsection (g) thereof; and also by striking the words and punctuation “filed, and recorded” wherever the same appears in the remaining sentences of said subsection and substituting therefor the words “and filed”.

Section 13. Amend Section 241, Title 8, Delaware Code, by striking from subsection (b) thereof the words and punctuation ", filed and recorded" and substituting therefor the words "and filed".

Section 14. Amend Section 242, Title 8, Delaware Code, by striking from paragraph (b)(1) of said section the words and punctuation ", filed and recorded" and substituting therefor the words "and filed".

Section 15. Amend Section 242, Title 8, Delaware Code, by deleting from paragraph (b)(3) thereof the word "recorded" wherever it appears, and by adding the word "and" before the word "filed" where "filed" first appears, and following the word and punctuation "filed," where it next appears.

Section 16. Amend Section 245, Title 8, Delaware Code, by striking from subsection (d) thereof the words and punctuation ", filed and recorded" and substituting therefor the words "and filed".

Section 17. Amend Section 251, Title 8, Delaware Code, by striking from subsection (c) thereof the words and punctuation "It shall be recorded in the office of the Recorder of Deeds of the county of this State in which the registered office of the surviving constituent corporation is located; or if any of the constituent corporations shall have been created by a public act of the General Assembly, then the agreement shall be recorded in the county where such corporation had its principal place of business in this State."

Section 18. Amend Section 251, Title 8, Delaware Code, by striking from subsection (c) thereof the words "and recording".

Section 19. Amend Section 252, Title 8, Delaware Code, by striking from subsection (c) thereof the words "and recorded" and "and recording".

Section 20. Amend Section 253, Title 8, Delaware Code, by striking from subsection (a) thereof the words and punctuation "A certified copy of the certificate shall be recorded in the office of the recorder of the county in this State in which the registered office of each constituent corporation which is a corporation of this State is located."

Section 21. Amend Section 254, Title 8, Delaware Code, by striking from subsection (d) thereof the words "and recorded" and "and recording" wherever they appear.

Section 22. Amend Section 255, Title 8, Delaware Code, by striking from subsection (c) thereof the words and punctuation "It shall be recorded in the office of the recorder of the county in this State in which the registered office of each such constituent corporation is located; or if any of the constituent corporations shall have been specially created by public act of the General Assembly, then the agreement shall be recorded in the county where such corporation had its principal place of business in this State."

Section 23. Amend Section 256, Title 8, Delaware Code, by striking from subsection (c) thereof the words "and recorded".

Section 24. Amend Section 257, Title 8, Delaware Code, by striking from subsection (c) thereof the words "and recorded".

Section 25. Amend Section 263, Title 8, Delaware Code, by striking from subsection (c) thereof the words "and recorded" and the words "and recording".

Section 26. Amend Section 264, Title 8, Delaware Code, by striking from subsection (c) thereof the words "and recorded" and the words "and recording".

Section 27. Amend Section 303, Title 8, Delaware Code, by striking from subsection (c) thereof the words "and recorded".

Section 28. Amend Section 311, Title 8, Delaware Code, by striking subsection (b) thereof in its entirety and by substituting therefor a new subsection to read:

"(b) Upon the filing in the office of the Secretary of State of the certificate of revocation of dissolution, the Secretary of State, upon being satisfied that the requirements of this section have been complied with, shall issue a certificate that the dissolution has been revoked. Upon the issuance of such certificate by the Secretary of the State, the revocation of the dissolution shall become effective and the corporation may again carry on its business."

Section 29. Amend Section 312, Title 8, Delaware Code, by striking the words and number "subsection (c) of § 136" wherever they appear in said section and substituting therefor "subsection (b) of § 136".

Section 30. Amend Section 312, Title 8, Delaware Code, by striking from subsection (c) thereof the words and punctuation "filing and recording" and substituting therefor the words "and filing".

Section 31. Amend Section 313, Title 8, Delaware Code, by striking subsection (b) thereof in its entirety and by inserting anew subsection in its place to read:

"(b) Upon the filing by the corporation of the proof of classification as required by subsection (a) of this section, and the filing of the certificate of renewal and revival, and payment of the required filing fees, the Secretary of State shall issue a certificate that the corporation's certificate of incorporation or charter has been renewed and revived as of the date of the certificate and the corporation shall be renewed and revived with the same force and effect as it provided in subsection (e) of § 312 of this title for other corporations."

Section 32. Amend Section 344, Title 8, Delaware Code, by striking the words and punctuation ", filing and recording" and substituting therefor the words "and filing".

Section 33. Amend Section 388, Title 8, Delaware Code, by striking subsection (b) thereof in its entirety and by inserting a new subsection in its place to read:

"(b) Any non-United States corporation may become domesticated in this State by filing with the Secretary of State:

(1) A certificate of domestication which shall be executed in accordance with subsection (g) of this section, and filed in accordance with § 103 of this title, and

(2) A certificate of corporation, which shall be executed, acknowledged, and filed in accordance with § 103 of this title."

Section 34. Amend Section 391, Title 8, Delaware Code, by striking paragraph (a)(7) thereof in its entirety and inserting a new paragraph in its place to read:

"(7) For receiving and filing and/or indexing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee of \$50 in each case shall be paid to the Secretary of State. The fee in the case of a certificate of incorporation filed as required by § 102 of this title shall be \$25. For entering information from each instrument into the Delaware Corporation Information System in accordance with § 103(c)(6) the fee shall be \$20 except the fee for entering such information for a certificate of incorporation filed as required by § 102 of this title shall be \$10."

Section 35. Amend Section 391, Title 8, Delaware Code, by striking paragraph (a)(10) thereof in its entirety and inserting a new paragraph in its place to read:

"(10) For certifying copies of any paper on file provided by this chapter, a fee of \$20 shall be paid for each copy certified. In addition, a fee of \$1 per page shall be paid in each instance where the Secretary of State provides the copies of the document to be certified."

Section 36. Strike Section 392, Title 8, Delaware Code, in its entirety.

Section 37. Amend Section 512, Title 8, Delaware Code, by striking the last sentence in said section.

Section 38. Amend Section 9605, Title 9, Delaware Code, by striking paragraph (a) thereof in its entirety and substituting in lieu thereof a new paragraph (a) to read as follows:

"(a) Each recorder shall record within a reasonable time, deeds, indentures, letters of attorney relating to land, mortgages, releases of lien of mortgages, leases, releases, assignments, conditional sales and leases of railroad and railway equipment and rolling stock, oaths of office, plots and descriptions, appointments of deputy registers of wills, certificates of commissioners and agreements of owners bounding and marking lands, petitions and orders for sheriffs' deeds, all instruments authorized or directed by law to be recorded or lodged by the Recorder of Deeds, including certificates of discharge regularly issued by the United States Army, Air Force, Navy, Coast Guard, or Marine Corps. The recorder shall forthwith make a proper note of the same in the indices. No fee shall be charged for recording any certificate of discharge in this subsection."

Section 39. Amend Section 9607, Title 9, Delaware Code, by striking paragraph (b) thereof in its entirety and substituting in lieu thereof a new paragraph (b) to read as follows:

"(b) The recorder of each county shall collect for each document or paper recorded or filed, a surcharge of \$5 for the support of the Housing Development Fund, and an additional \$1 fee for the support of the Local Government Records Management Improvement Fund. The surcharge of \$5 and the additional \$1 fee is included in the assessment fee collected by each county in accordance with

§ 103(c)(5), Title 8, Delaware Code. Any instrument for which an assessment fee is charged shall be considered one document for purposes of determining the surcharge of \$5 and the \$1 fee."

Section 40. Amend Title 9, Delaware Code, by adding a new Section 9624 to read as follows:

"§ 9624. Integration of Documents from the Office of the Secretary of State. The recorder of deeds of each county may, at his or her discretion and expense, integrate the information and documents from the Delaware Corporation Information System and the Optical Disk Imaging System of the Secretary of State or any successor thereto into any system of the recorder for the electronic filing and storage of information, including any system for the remote accessing of information, and may print or microfilm documents from the Delaware Corporate Information System and Optical Disk Imaging System, provided, that any user of a county system for the remote accessing of information which includes the Delaware Corporation Information System and the Optical Disk Imaging System documents and images shall, as a condition of such use: 1) be at a location within the State of Delaware; and 2) comply with all relevant rules and regulations adopted from time to time by the Secretary of State governing the use of such documents by remote users, including but not limited to those rules limiting the transmission of such documents from the remote site; provided further, that the County shall collect from each remote user (in addition to such charges or fees as the County may assess and collect for itself pursuant to § 9625 of this Chapter), and pay over to the Secretary of State not less than monthly such fee which the Secretary of State shall from time to time assess for the privilege of accessing and copying at a remote site documents which originate on the Optical Disk Imaging System.

Section 41. Amend Title 9, Delaware Code, by adding a new Section 9625 thereto to read as follows:

"§ 9625. Each recorder shall not charge any fees or telephone or other electronic connection charges to title searchers, other commercial users or members of the public to use the computer hardware and software system provided by the Department of State in

each recorder's office to access, search and view the information and documents available on the Delaware Corporation Information System and Optical Disk Imaging System of the Department as provided in Section 2319 of Title 29; but each recorder may establish and amend from time to time reasonable rules for the use of such on-site system and may charge a reasonable fee for printing images or information from the system or for remote access to such information and documents."

Section 42. Amend Title 29, Delaware Code, by adding a new Section 2319 thereto to read as follows:

"§ 2319. The Secretary of State shall, at no expense to the counties, provide and install computer hardware and software in the offices of the recorder of deeds of each of the counties to access, search, view and print the complete Delaware Optical Disk Imaging System and the Delaware Corporation Information System of the Secretary of State. Such computer hardware and software shall be substantially equivalent to that utilized by other remote users of the Delaware Optical Disk Imaging System and the Delaware Corporation Information System. The Secretary of State shall also provide and install at its own expense in the office of each recorder any upgrade of either of such computer hardware or software, or both, which the Secretary of State installs from time to time in its own system, where such upgrade is necessary to maintain no less than the same capacity for accessing, searching, storing, viewing and printing Delaware Corporation Information System and Optical Disk Imaging System documents and information at each of the recorder's offices as existed immediately prior to the installation of such upgrade by the Secretary of State in its own system. The Secretary of State shall provide appropriate training for the operation of the installed systems or any changes to the systems to two members of each Recorder's office staff at no charge to the Recorders. Each recorder shall maintain at its own expense the computer hardware that has been installed by the Secretary of State in its offices. The Secretary of State shall provide each recorder the same level of maintenance and support for the system software as provided to other remote users, and shall charge each recorder no more than other remote users are charged for similar services. Each recorder shall also pay for the initial installation and subsequent monthly charges for all required telephone lines or other electronic connections between the recorders' offices and the Secretary of State. The State shall not charge any fees to the recorders for access and use through the recorders' offices of the Delaware Corporation Information System and Optical Disk Imaging System of the Secretary of State."

Section 43. This Act shall become effective on the later of July 1, 1996, or at such time as the Secretary of State shall certify upon the recommendation of the Delaware Office of Information Services that the computer hardware and software is installed in the recorder's offices of New Castle, Kent and Sussex Counties and adequately functioning to access, retrieve and print images from the Optical Disk Imaging System of the Secretary of State, and that two operators in each Recorder's office have been trained.."

Approved July 25, 1996

CHAPTER 388

FORMERLY

HOUSE BILL NO. 621

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO SHELLFISH AND THE REGULATORY AUTHORITY OF THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1902(a), Title 7, Delaware Code, by redesignating paragraphs (2), (3) and (4) as (3), (4) and (5), respectively, and by adding thereto a new paragraph (2) to read as follows:

“(2) To prevent and control the spread of shellfish-borne diseases by providing for the sanitary harvesting, handling, transportation, processing, production and sale of shellfish;”

Section 2. Amend § 2405(b), Title 7, Delaware Code, by striking the phrase “of Health and Social Services”.

Section 3. Amend § 2604(a), Title 7, Delaware Code, by striking the phrase “of Health and Social Services”.

*Approved July 25, 1996*

## CHAPTER 589

## FORMERLY

## HOUSE BILL NO. 624

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE AND THE LAWS OF DELAWARE RELATING TO THE LICENSING OF PARTICIPANTS, OFFICIALS, AND OTHERS IN HARNESS RACING MEETS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 100, Title 3, Delaware Code by adding thereto new Sections 10012, 10013, 10014 and 10015 to read as follows:

“Section 10012. License to participate in racing.

(a) The Commission may establish categories of licenses, and impose license fees as specified in subsection (b) of this section, for persons participating in pari-mutuel harness racing meets under the jurisdiction of the Commission.

(b) Any person required by the Commission to be licensed to participate in pari-mutuel harness racing during any calendar year shall at the time of making application for such license pay to the Commission a fee as follows:

i. for each owner, owner's authorized agents, trainer, driver or groom, or a combination thereof, \$10.00

Section 10013. License to officiate at race meets.

(a) The Commission may establish categories of licenses, and impose license fees as specified in subsection (b) of this section, for persons serving as racing officials at pari-mutuel harness race meets under jurisdiction of the Commission.

(b) Any person required by the Commission to be licensed to serve as a racing official during any calendar year shall at the time of making application for such license pay to the Commission a fee, as follows:

i. State Steward, \$25.00

ii. Presiding Judge, \$20.00

iii. Associate Judge, \$15.00

iv. Paddock Judge, Horse Identifier and Equipment Checker, or Patrol Judge, \$10.00

v. State Veterinarian or Lasix Veterinarian, \$10.00

vi. Breath Analyzer, Veterinary Assistant, Paddock Inspector, Laboratory personnel, and all other paddock personnel, \$10.00

vii. Racing Secretary, \$20.00

viii. Assistant Racing Secretary, \$10.00

ix. Official Starter, Clerk of the Course, Official Charter or Official Timer, \$10.00

x. for any other person designated by the Commission to be licensed as a pari-mutuel racing official, \$10.00

Section 10014. License to work for a race meet licensee.

(a) The Commission may establish categories of licenses, and impose license fees as specified in subsection (b) of this section, for persons working for a licensee during pari-mutuel harness race meetings under the jurisdiction of the Commission.

(b) The Commission shall require persons working for a licensee during any calendar year to be licensed and at the time of making application for such license pay to the Commission a fee, as follows:

i. vendor, \$15.00

ii. photographer, \$15.00

iii. for employees of a vendor, employees of a photographer, concession stand workers, maintenance personnel, parking lot attendants, admission staff, security personnel, mutual employees, timer or totalizator and film patrol workers, \$5.00; and

iv. for any other persons designated by the Commission to be licensed to work for a race meet licensee during a pari-mutuel harness race meet, \$5.00.

Section 10015. Special powers of the Commission.

The Commission shall require that any person who is required to be licensed to participate in pari-mutuel harness racing, under the jurisdiction of the Commission, be fingerprinted by the Commission or its designee for purposes of a criminal history check on such applicant. Any person required by the Commission to be fingerprinted as part of the license application process shall also be responsible for payment to the State Bureau of Identification for the cost of fingerprinting and conducting state and federal criminal history checks. The State Bureau of Identification shall be the intermediary for the purpose of this section for the receipt of said federal criminal history records."

Approved July 25, 1996

## FORMERLY

## HOUSE BILL NO. 633

AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO THE CHILDREN'S TRUST FUND BOARD OF DIRECTORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 404(b) of Title 31 of the Delaware Code by striking the numeral "12" as it appears in the first sentence and by substituting in lieu thereof the phrase "up to 25".

Section 2. Amend Section 404(b) of Title 31 of the Delaware Code by striking the phrase "Eight of whom shall be appointed by the Governor, 1 shall be the Chairperson of the Juvenile Justice Advisory Group, others" as it appears in the third sentence and by substituting in lieu thereof the phrase "Up to 21 members, one of whom shall be the Chairperson of the Juvenile Justice Advisory Group, shall be appointed by the Governor. Other members appointed by the Governor".

Section 3. Amend Section 404(b) of Title 31 of the Delaware Code by striking the sentence "Secretaries of the following departments and the Chief Judge of Family Court shall appoint 1 designee: The Department of Services for Children, Youth and Their Families (DSCYF), Department of Health and Social Services (DHSS), Department of Public Instruction (DPI) and Family Court." and by substituting in lieu thereof the following: "The Secretaries of the Department of Services for Children, Youth and Their Families (DSCYF), the Department of Health and Social Services (DHSS), and the Department of Public Instruction (DPI), and the Chief Judge of the Family Court shall each appoint 1 member of the Board."

Approved July 25, 1996

## CHAPTER 591

## FORMERLY

## HOUSE BILL NO. 671

AN ACT TO AMEND CHAPTER 13, TITLE 24, DELAWARE CODE RELATING TO PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

AMEND § 1318(2) Chapter 13, Title 24, Delaware Code by striking the semicolon ";" at the end thereof and substituting in lieu thereof the following:

"or must have at least five (5) years investigative experience or must have been a police officer for any local, state, or federal agency, or the equivalent thereof who has graduated from a certified law enforcement academy;"

AMEND § 1319(2) Chapter 13, Title 24, Delaware Code by deleting said subsection in its entirety and substituting in lieu thereof the following:

"Must have at least five (5) years investigative experience or must have been a police officer for any local, state, or federal agency, or the equivalent thereof who has graduated from a certified law enforcement academy;"

AMEND § 1328 Chapter 13, Title 24, Delaware Code by deleting the phrase "shall not exceed \$200 per year" and substituting in lieu thereof the phrase "shall not exceed \$600 per year".

Approved July 25, 1996

## CHAPTER 592

## FORMERLY

## HOUSE BILL NO. 672

AN ACT TO AMEND CHAPTER 166, VOLUME 37, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF SELBYVILLE", TO PROVIDE FURTHER FOR THE SUPPLYING OF WATER, TO PROVIDE LIMITATIONS ON TAXES, TO PROVIDE FOR USE OF TOWN MONIES, TO PROVIDE FOR LONG-TERM BORROWING AND PROCEDURES THEREFOR AND TO REPEAL ANY ACT TO THE EXTENT ITS PROVISIONS ARE INCONSISTENT WITH THIS AMENDMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

SECTION 1. Amend Section 4, Subsection 12, Chapter 166, Volume 37, Laws of Delaware, as amended, by striking said paragraph in its entirety and substituting in lieu thereof the following:

"12. To provide an ample supply of potable water for the Town and its inhabitants and to this end to acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of wells, reservoirs, pumps, machines, water treatment facilities, stations, tanks, standpipes, water mains, fire hydrants, and all other equipment, property or rights used in or about the collection, storage, purification, conveyance, or distribution or sale of water; to regulate and prescribe for what public or private purposes the water furnished by the Town may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties, or both, for any wilful or negligent injury, or damage to or interference with the water system or the equipment of the Town; to furnish or refuse to furnish water from the Town system to places and properties outside the Town limits; and to contract for and purchase water and distribute the same to users within or without the Town with the same full powers as though such water had been initially reduced to usefulness by the municipality itself."

SECTION 2. Amend Section 8, Chapter 166, Volume 37, Laws of Delaware, as amended, by striking in the first sentence the clause "provided that the amount to be raised shall not in any year be more than Five Hundred Thousand Dollars (\$500,000.00)" and substituting in lieu thereof the following:

"provided that the amount of real property taxes to be raised shall in no year exceed three percent (3%) of the total appraised valuation on all taxable real estate (and improvements thereon) in the Town"

SECTION 3. Amend Section 9, Chapter 166, Volume 37, Laws of Delaware, as amended, by striking said section in its entirety and by substituting in lieu thereof the following:

"Section 9. The Mayor and Council of the Town of Selbyville shall have full power and authority to use the money in the treasury of the said Town, or any portion thereof, from time to time, for the improvement, benefit, protection, ornamentation and best interest in said Town, as the Mayor and Council may deem proper, and to use Town money to accomplish and carry into effect all acts and things which it has power to do by virtue of the Laws of Delaware, this Act and all lawful ordinances and resolutions of the Mayor and Council. On or before the 20th day of February of each year a financial statement showing in detail the receipts and expenditures of the Town for the year then closing, shall be made in

public in a newspaper circulated in the Town of Selbyville, or posted in some public and conspicuous place in said Town."

SECTION 4. Amend Chapter 166, Volume 37, Laws of Delaware, as amended, by adding a new Section thereto as follows:

"Section 19. Long-Term Borrowing: Voter Approval Required

19.1 Long-Term Borrowing: Voter Approval Required. In addition to other borrowing powers granted to the Town under this Charter or by special act, the Mayor and Council shall have authority to borrow money for any proper municipal purpose through the issuance of bonds or certificates of indebtedness to secure the repayment thereof, on the full faith and credit of the Town, or such other security or securities as the Mayor and Council shall elect, for the payment of principal thereof and interest due thereon.

19.2 Proper Municipal Purpose. By way of illustration and not in limitation, "any proper municipal purpose" includes, but is not limited to:

(A) refunding any or all outstanding bonds or other indebtedness of the Town at the maturity thereof or in accordance with any callable feature or provision contained therein.

(B) erecting, extending, enlarging, maintaining, or repairing any plant, building, machinery, or equipment for the manufacture, supplying, or distribution of gas, water, electricity, sewerage, or drainage system, or any of them, and the condemning or purchasing of any lands, easements, and right-of-ways which may be required therefore.

(C) constructing, paving, laying out, widening, extending, repairing and maintaining streets, lanes, alleys and ways, and the paving, constructing, laying-out, widening extending, repairing, and maintaining of curbing and gutters, including storm sewers, along the same, and the condemning or purchasing of lands, easements or rights of ways which may be required therefor.

(D) constructing, paving laying out, widening, extending, repairing and maintaining boardwalks, piers, jetties, bulkheads, sidewalks, cross walks, or embankments, or any of them, and the condemning or purchasing of any lands, easements, or rights of way which may be required therefor.

(E) defraying the costs to the Town of any other municipal improvement provided for or authorized or implied by the provisions of this Charter.

(F) paying all expenses deemed necessary by the Mayor and Council for the issuance of said bonds or certificates of indebtedness, including bond discount and legal expenses of bond counsel.

19.3 Exempt From Taxation. All bonds or other kinds or forms of certificate or certificates of indebtedness issued by the Town pursuant to the provisions of this section, and the interest thereon, shall be exempt from all State, County, or Municipal taxes.

19.4 Limit of Aggregate Long-Term Indebtedness. In no event shall the indebtedness of the Mayor and Council of the Town of Selbyville, authorized by this Section, at any one time exceed, in the aggregate, twenty-five percent (25%) of the appraised valuation of all real property within the corporate limits of the Town of Selbyville and subject to assessment for the purpose of levying the annual town taxes as provided in this Charter.

19.5 Procedure: Notice, Hearing, Election. In order to proceed under the power granted in this section, the Mayor and Council shall authorize such borrowing in the following manner:

(A) The Mayor and Council by resolution shall give notice to the residents and property owners of the Town that the Mayor and Council propose to borrow a sum of money, not to exceed a stated amount, for a stated municipal purpose. The resolution shall state the amount of money desired to be borrowed (which may be stated as a "not to exceed" amount), the purpose for which it is desired, the manner of securing same, and such other facts relating to the loan which are deemed pertinent by the Mayor and Council and in their possession at the time of the passage of the Resolution; and they shall fix a time, date and place for a hearing on the said resolution.

(B)(1) Notice of the time, date, and place of the hearing on the resolution authorizing said loan shall be published in two newspapers of general circulation in the Town not less than 15 days, nor more than 60 days, prior to the date set for the public hearing. Such notice shall be in bold print or bordered in black so as to call attention thereto. In addition to the time, date, and place of the public hearing such notices shall contain the same information as required under Subsection 19.5(A) above.

(2) In addition to publication as herein provided, the Mayor and Council shall, not less than 15 days nor more than 60 days prior to the date set for the hearing, cause a public notice containing the information required above to be posted in at least five public places in the Town. In the event the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control.

(C) If, at any time following the public hearing, the Mayor and Council determines to proceed with the proposed borrowing, it shall pass a second resolution ordering a special election to be held, upon not less than 15 nor more than 60 days public notice, for the purpose of voting for or against the proposed borrowing. The passage of the second Resolution shall ipso facto be considered a determination by the Mayor and Council to proceed with the matter in issue; provided, however, that the Mayor and Council may, at any time subsequent thereto, and based upon a significant change in the relevant circumstances, act by resolution to cancel the Special Election and abandon the proposed borrowing.

(D)(1) The notice of the time and place of holding the said Special Election shall be printed in two newspapers of general circulation in the Town, not less than 15 days nor more than 60 days prior to the date set for the Special Election. In addition to the time, date and place of the election, such notice shall contain the same information as required under Section 19.5(A). Such notice shall be in bold print or bordered in black so as to call attention thereto.

(2) In addition to such publication as herein provided, the Mayor and Council shall, not less than 15 days nor more than 60 days before the date set for the election, cause public notice, containing the information set out in subsection (D)(1) above (using date of "posting" for date of "publication"), to be posted in at least 5 public places in the Town. In the event the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control.

(E) At such special election, any person who is entitled to vote in the annual town election, if it were held on that day, shall be entitled to one vote. (For purposes of this section, "entitled to vote" shall include "registered to vote" if voter registration is required for the annual town election.)

Any Special Election held pursuant to the provisions of this section shall be conducted by voting machines, electronic voting systems, or printed ballots as permitted by law which shall have the following designation:

For the proposed borrowing.

Against the proposed borrowing.

The voter shall be instructed to mark the box for which he casts his vote. The Mayor of the Town of Selbyville, by and with the advice and consent of the majority of the Mayor and Council shall appoint three (3) persons to act as a Board of Special Election. The polling places shall be opened for a minimum of six hours as specified by resolution of the Mayor and Council. Persons in the polling place at the time appointed for closing of the polls shall be entitled to vote.

(F) The Board of Special Election shall be the sole and final judges of the legality of the votes offered at such special election. It shall keep a true and accurate list of all persons voting. It shall count the votes for and against the proposed borrowing and shall announce the result thereof. The Board of Special Election shall make a certificate under their hands of the number of votes cast for and against the proposed borrowing and the number of void votes and shall deliver the same to the Mayor and Council which said certificate shall be retained by the Mayor and Council with the other papers of the Town.

(G) If a majority of the votes cast at such special election shall be in favor of such borrowing, the Mayor and Council shall proceed with the issuance of the said bonds or certificates of indebtedness; provided, however, that the Mayor and Council may, at any time prior to entering into a binding agreement for the public or private sale of such bond(s) or evidences(s) of indebtedness, abandon the proposed borrowing.

#### 19.6 Form of Bonds.

(A) The form of the bonds or certificated of indebtedness and the thereunto attached coupons, if any, the time or times of payment, the interest rate, the classes, the series, the maturity, the registration, any callable or redeemable feature, the denomination, the name thereof and any other relative or appurtenant matter pertaining thereto shall all be determined by the Mayor and Council after said Special Election.

(B) In anticipation of the issuance of said bonds at any time after a special election resulting in a vote in favor of the bond issue, the Mayor and Council may issue and sell bonds anticipatory notes of the Mayor and Council at either public or private sale for not less than par and accrued interest. Said notes may be renewed from time to time by the issuance of and sale of new notes. Said notes shall bear interest at a rate determined by the Mayor and Council to be fair and reasonable. All such notes shall mature and be paid not later than two (2) years from the date of issuance. The total amount of said notes outstanding at any one time shall not exceed the amount for which a special election resulted in a favorable vote. Said notes shall be redeemed at par and accrued interest prior to their maturity if the Mayor and Council of the Town of Selbyville shall have reserved the right to do so by an express provision in the note or notes. The principal and any interest due on said notes may be paid from the proceeds of the sale of the bonds authorized by this section. Both interest on and principal of any bond anticipatory notes shall not be subject to taxation by the State of Delaware or any political subdivision thereof.

19.7 Public or Private Sale. The bonds may be sold at either public or private sale. If the bonds shall be offered for public sale, they shall be sold to the best and most responsible bidder(s) therefore after advertisement in a manner to be

prescribed by the Mayor and Council for at least one (1) month before offering the same for sale.

19.8 Provision for Payment: Special Tax, Sinking Fund. The Mayor and Council shall provide for the payment of interest on the principal of the said bonds or certificates of indebtedness at the maturity thereof. The said Mayor and Council is authorized and empowered, at its discretion, to levy a special tax upon all the real estate within the Town or only upon such real estate as is directly benefited by the improvements paid for by the proceeds of such borrowing to pay interest on said bonds and/or principal; and at their discretion, to establish a sinking fund adequate to the redemption, at or before maturity, of all bonds or certificates of indebtedness which may be issued under the provisions of this Section; provided that the amount to be raised under any special tax for this purpose shall not in any one year exceed a sum equal to five per centum of the total bonded indebtedness. The special tax provided for in this Section shall be collected from the owners of real estate in the same manner as the other taxes levied by the said Mayor and Council are collected. Said Mayor and Council may also appropriate and set aside for such sinking fund so much of the general funds of said town as they may from time to time think advisable. The sinking fund provided for by this Section shall be deposited in federally insured deposits in a bank, trust company, or other banking institution until such time as it may be needed for the redemption of the bonds.

19.9 Full Faith and Credit Unless Otherwise Stated. Unless any such bond(s) or certificate(s) of indebtedness shall provide otherwise, the full faith and credit of the Mayor and Council of the Town of Selbyville shall be deemed to be pledged for the due payment of the bonds and the interest thereon issued under the provisions of this section when the same shall have been properly executed and delivered for value notwithstanding any other provision of this Charter.

19.20 Statute of Limitations, 60 days. No action contesting any proceedings conducted, or action taken, by the Mayor and Council hereunder regarding the authorization of any bonds or certificates of indebtedness issued under this Section shall be brought after the expiration of sixty days from the publication of a notice in at least two newspapers, one of which shall be of general circulation in the Town of Selbyville and one of which shall be of general circulation in the State of Delaware, which notice shall announce the following information:

(A) That the Mayor and Council has determined to borrow a certain sum of money and to issue bonds or certificates of indebtedness therefor.

(B) That the proposed has been approved by a majority of those casting votes at a special election in the Town called for the purpose of voting for or against the borrowing.

(C) The amount of money to be borrowed.

(D) The purpose for which it is to be borrowed.

(E) That any person desiring to challenge the authorization of such bond(s) or certificate(s) of indebtedness must bring his or her action within 60 days from the date of publication of such notice or forever be barred from doing so.

(F) Such notice shall be in bold print or bordered in black in such manner as to call attention thereto. In addition to publication as herein provided, the Mayor and Council shall cause a public notice, containing the information set out in subsections (A) through (E) above (using date of "posting" for date of "publication") to be posted in at least 5 public places in the Town. In the event the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control."

SECTION 5. Any Act inconsistent with the provisions hereof is repealed to the extent of such inconsistency; and any bonds of the Mayor and Council of the Town of Selbyville outstanding shall remain in good standing notwithstanding this Amendment.

Approved July 25, 1996

CHAPTER 593

FORMERLY

HOUSE BILL NO. 639

AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, SECTION 26 OF THE DELAWARE CONSTITUTION OF 1897, AS AMENDED, RELATING TO THE POWERS AND DUTIES OF THE PROTHONOTARY AND THE ENTRY OF TESTATUM FIERI FACIAS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1 Amend Article IV, Section 26 of the Delaware Constitution of 1897, as amended, by adding the following sentence at the end of the section:

"This section shall not be interpreted to prevent the transfer of a judgement from any court of one county to the Superior Court of another county pursuant to legislation enacted by the General Assembly, nor shall it be construed to require the issuance or entry into the record of a testatum fieri facias when a judgment is transferred from a court of one county to the Superior Court of another county pursuant to legislation enacted by the General Assembly."

Passed June 30, 1996

CHAPTER 594

FORMERLY

HOUSE BILL NO. 573

AN ACT AUTHORIZING AND DIRECTING THE DELAWARE COMMISSION OF VETERANS AFFAIRS TO ESTABLISH, MAINTAIN AND OPERATE A SECOND DELAWARE VETERANS MEMORIAL CEMETERY TO BE LOCATED IN SUSSEX COUNTY ON LAND OWNED BY THE STATE OF DELAWARE, SAID LAND TO BE DEEDED TO THE COMMISSION BY THE DEPARTMENT OF HEALTH & SOCIAL SERVICES ON LAND PRESENTLY A PART OF THE STOCKLEY CENTER, LOCATED NEAR MILLSBORO, DELAWARE.

WHEREAS, on June 9, 1983, the State of Delaware authorized the establishment of Delaware Veterans Memorial Cemetery based on a detailed feasibility report done by the Adjutant General; and

WHEREAS, the Department of State, along with the Delaware Commission of Veterans Affairs selected site in New Castle County onlands near Summit Bridge along the Chesapeake and Delaware Canal; and

WHEREAS, there is a growing need for a second Veterans Memorial Cemetery, particularly in Sussex County where the Department of Health and Social Services have expressed the desire of deeding 100 plus acres for the purpose of establishing a Veterans Memorial Cemetery.

NOW THEREFORE,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1 The Department of State, with the approval of the Delaware Commission of Veterans Affairs is hereby authorized and directed to proceed for the establishment of a second Veterans Memorial Cemetery to be located on the grounds of the Stockley Center near Millsboro, Delaware

Approved July 26, 1996

## CHAPTER 595

## FORMERLY

## HOUSE BILL NO. 549

## AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE BOARD OF PENSION TRUSTEES AND INVESTMENT POOLS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 8308, Title 29, Delaware Code, by adding a new subsection "(1)" to read as follows:

"(1) The Board shall establish a Local Government Retirement Investment Pool with the following powers, duties and functions:

(1) The governing body or investing authority of a local government, meaning any city, town, or county in Delaware, may pay public retirement moneys of the local government into the Local Government Retirement Investment Pool which shall be in the custody of the Board of Pension Trustees. The Board of Pension Trustees shall invest the funds in the same manner and in the same types of investments and subject to the same limitations provided for the deposit and investment of state retirement funds. Funds of the local governments may be commingled with funds of the state pension trust for investment purposes only, and shall be accounted for separately.

(2) The Board of Pension Trustees shall adopt such rules and regulations as are necessary for the administration of this Investment Pool including specification of minimum amounts which may be paid into the Pool and minimum periods of time for which such payments shall be retained in the Pool. Earnings shall be equitably pro-rated among the local governments in the Pool based upon the amount and length of time the moneys are on deposit in the Pool. All costs of participation and administration in the Pool shall be equitably pro-rated among the participating local governments."

Approved July 26, 1996

## CHAPTER 596

## FORMERLY

## HOUSE BILL NO. 599

## AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO CERTAIN CRIMES COMMITTED BY JUVENILES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 921(2)b of Title 10 of the Delaware Code by striking the second paragraph of said paragraph in its entirety and by substituting in lieu thereof the following:

"Superior Court shall retain jurisdiction for purposes of sentencing and all other postconviction proceedings if any judge or jury shall find the child guilty of a lesser included crime following a trial or plea of guilty in any prosecution for one of the crimes specifically defined in this subsection, or for any crime where the child has been transferred to the Superior Court by the Family Court pursuant to

§ 1010 of this Title."

Section 2. Amend Section 1010(a)(2) of Title 10 of the Delaware Code by striking the phrase "has reached his 16th birthday and" as it appears therein.

Section 3. Amend Section 1010(c) of Title 10 of the Delaware Code by redesignating paragraph (2) thereof as paragraph (3).

Section 4. Amend Section 1010(c)(1) of Title 10 of the Delaware Code by striking the first sentence of paragraph (1) in its entirety and by striking the phrase "whether the child is so amenable" as it appears in the first clause of the second sentence of said paragraph and substituting in lieu thereof the phrase "whether a child is amenable to the rehabilitative processes of the Court."

Section 5. Amend Section 1010(c) of Title 10 of the Delaware Code by adding thereto a new paragraph (2), to read as follows:

"(2) The Court shall defer further proceedings in the Family Court and shall conduct a hearing to determine whether the child is amenable to the rehabilitative process of the Court:

- a. Upon motion of the Court, whenever a child is charged with delinquency; or
- b. Upon motion of the Attorney General, whenever a child has reached his or her 14th birthday and is thereafter charged with being delinquent; or
- c. Whenever a child has reached his or her 14th birthday, and is thereafter charged in accordance with § 1009(c)(5) of this Title."

Section 6. Amend Section 1010 of Title 10 of the Delaware Code by adding thereto a new subsection (d) to read as follows:

"(d) Notwithstanding any provisions of this Title to the contrary, in any case in which the Superior Court has jurisdiction over a child, the Court shall retain jurisdiction for purposes of sentencing and all other postconviction proceedings if any judge or jury shall find the child guilty of a lesser included crime following a trial or plea of guilty."

Section 7. Amend Section 1447A(e) of Title 11 of the Delaware Code by striking the phrase "16 years" as it appears therein, and by substituting in lieu thereof the phrase "15 years".

Section 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or application of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Section 9. Any action, case, prosecution, trial or other legal proceeding in progress at the time of the enactment into law of the provisions of this Act, no matter the stage of the proceeding, shall be preserved and shall not become illegal or terminated upon the effective date of this Act. The prior law shall remain in full force and effect as to all such proceedings in progress at the time of enactment of this Act.

Section 10. The provisions of Sections 1 and 6 of this Act shall be effective immediately upon enactment. The provisions of the remaining sections of this Act shall be effective with respect to all crimes or acts of delinquency committed after January 15, 1998.

Approved July 31, 1996

## CHAPTER 597

### FORMERLY

#### SENATE BILL NO. 437

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE  
DETENTION AND CONFINEMENT OF YOUTH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend § 2103A, Title 11, Delaware Code by deleting said section in its entirety and inserting in lieu thereof the following:

"When a child has reached his or her 16th birthday and is found to be nonamenable to the rehabilitative processes of the Family Court, or is charged with an offense in Superior Court and thereafter makes application for transfer of said charges to Family Court pursuant to 10 Del.C. § 1011 and is denied, or fails to make application pursuant to 10 Del.C. § 1011 within the required time and is therefore held over for trial in Superior Court, the youth shall be remanded to the Department of Correction if held in default of bail."

Section 2. Amend § 4204A, Title 11, Delaware Code by deleting said section in its entirety and inserting in lieu thereof the following:

"(a) When a child who has reached his or her 16th birthday is sentenced in Superior Court such sentence shall be served with the Department of Correction.

(b) When a child who has not reached his or her 16th birthday, is sentenced in Superior Court to a period of incarceration, such sentence shall initially be served in a juvenile facility upon imposition of the sentence and such child shall remain in the custody of, or be transferred forthwith to, the Division of Youth Rehabilitative Services until the child's 16th birthday, at which time, such child shall be transferred forthwith to the Department of Correction to serve the remaining portion of said sentence."

Section 3. Amend § 2103A and § 4204A, Title 11, Delaware Code, by providing that said sections shall be effective until August 31, 1998, at which time they shall automatically expire and cease to be effective.

Section 4. Sections 3 and 4 of this Act shall be effective upon enactment and the remaining sections shall be effective August 31, 1998.

Approved July 31, 1996

## CHAPTER 598

## FORMERLY

SENATE BILL NO. 438  
AS AMENDED BY SENATE AMENDMENT NO. 1AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO CERTAIN  
CRIMES COMMITTED BY JUVENILES

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend §1010(a)(1) of Title 10 of the Delaware Code by adding the phrase "unlawful sexual penetration in the first degree" between the phrase "unlawful sexual intercourse in the first degree" and the phrase "or kidnapping" as they appear in said paragraph.

Section 2. Amend §1010(a) of Title 10 of the Delaware code by redesignating paragraph (3) thereof as paragraph "(4)", and by adding to said subsection a new paragraph (3) to read as follows:

"(3) The child has previously been adjudicated delinquent of one or more offenses which would constitute a felony were he or she charged as an adult under the laws of this State, and has reached his or her 16th birthday and the acts which form the basis of the current allegations constitute one or more of the following offenses: conspiracy first degree, unlawful sexual intercourse second degree, assault first degree, arson first degree, burglary first degree, robbery first degree, trafficking in marijuana, cocaine, illegal drugs, methamphetamine, L.S.D. or designer drugs (where the child is alleged to have committed acts constituting a violation of either subparagraph b. or c. of paragraph (1), (2), (3), (4), (5), (6) or (7) of §4753A(a) of Title 16 of the Delaware Code, or a violation of subparagraph a. of paragraph 8 of said subsection), or any attempt to commit any of the offenses set forth in this paragraph:"

Section 3. Amend §1010 of Title 10 of the Delaware Code by adding thereto a new subsection to be designated as subsection (d) which shall read as follows:

"(d) Notwithstanding any provision of this section or title to the contrary, when a child has reached his or her 15th birthday and is thereafter charged with being delinquent by having committed any offense which would constitute a felony were he or she charged as an adult under the laws of this State, said offense occurring while the child was an escapee from any Level IV or V facility operated for or by the Department of Services for Children, Youth and Their Families, upon motion of the Attorney General, or upon its own motion, the Court shall defer further proceedings in the Family Court and shall conduct a hearing to determine whether the child should be referred to the Superior Court for trial as an adult. If, at the conclusion of the hearing, the Court finds that evidence demonstrates that there is a fair likelihood that the child may be convicted of the charge or charges, it shall refer the child to the Superior Court for trial as an adult. If, at the conclusion of the hearing, the Court determines that there is no fair likelihood of conviction the case shall remain within the jurisdiction of the Family Court, subject to all other provisions of this Section and Title."

Section 4. Amend §1011(b) of Title 10 of the Delaware Code by striking the word "may" as it appears between the phrases "the Superior Court" and "hold a hearing" as they appear in the second sentence of said section, and by substituting in lieu thereof the word "shall".

Section 5. Amend §1011 of Title 10 of the Delaware Code by redesignating subsections (c) and (d) thereof as subsections (d) and (e), and by adding to said section a new subsection (c) to read as follows:

"(c) (1) The hearing described in subsection (b) of this section shall be held by the Superior Court only upon timely application of the defendant. Such application shall be deemed timely if made within 30 days of arraignment. No enlargement of said time period shall be permitted. Failure of the defendant to make application within the 30 day period shall constitute a waiver of his or her rights under this section.

(2) The hearing shall be held by the Superior Court as soon after such application is made as is practicable. Within 90 days of the arraignment, the Superior Court shall announce its decision as to whether the case is to be transferred to the Family Court; however, the Court's failure to do so shall not be considered as providing a basis for transferring the case to the Family Court, for dismissing the charges, or for providing any other form of relief."

Section 6. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Section 7. Any action, case, prosecution, trial or other legal proceeding in progress at the time of the enactment into law of the provisions of this Act, no matter the stage of the proceeding, shall be preserved and shall not become illegal or terminated upon the effective date of this Act. The prior law shall remain in full force and effect as to all such proceedings in progress at the time of enactment of this Act.

Section 8. The provision of Section 4, 5, 6, 7 and 8 of this Act shall be effective immediately upon enactment. The provisions of the remaining sections of this Act shall be effective with respect to all crimes or acts of delinquency committed after January 15, 1998.

Approved July 31, 1996

CHAPTER 599

FORMERLY

HOUSE BILL NO. 544

AS AMENDED BY HOUSE AMENDMENT NO. 1 AND  
HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 17 OF THE DELAWARE CODE RELATING TO THE  
REMOVAL OF SNOW ON PUBLIC ROADS AND HIGHWAYS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE (three-fourths of all members elected to each house thereof concurring  
therein):

Section 1. Amend Chapter 5, Title 17 of the Delaware Code, by adding a new section  
thereto as follows:

"§521. Snow removal in non-municipal residential communities.

(a) For purposes of this section:

(1) 'Department' shall mean the Department of Transportation.

(2) 'Organization' shall mean a civic association, neighborhood alliance,  
homeowners maintenance corporation, homeowners maintenance association, or other similar  
entity, charged with or assuming the duties of maintaining the public areas within a residential  
development or community not within the boundaries of a municipality.

(3) 'Snowstorm' shall mean a snowstorm event whose accumulation within the  
relevant county exceeds four (4) inches, as determined by the Department.

(4) 'Streets' shall mean those streets within a residential development or  
community which have been accepted for perpetual maintenance by the Department.

(b) An organization may contract for snow removal services for snowstorms impacting  
the streets within its development or community, and be partially reimbursed for the costs of  
such services, subject to the following conditions:

(1) The reimbursement shall be in an amount not to exceed 75% of the actual  
contracted cost of said services, but in any event shall not exceed 75% of an annual cost analysis  
determination made by the Department in its implementing regulations under subsection (c) of  
this section. The regulatory cost determination shall include, but not be limited to, the  
Department's cost of purchasing similar services under its own contracts.

(2) The organization's contracts with contractors providing these services must  
include provisions for proof of insurance and compliance with all relevant State license  
requirements, including, but not limited to, the provisions of Chapter 21 of Title 30.

(3) The selection of contractors for services shall not be subject to the provisions  
of Chapter 69 of Title 29.

(4) To obtain economies of scale, an organization may enter into written  
agreements with other organizations to obtain joint snow removal contracts for purposes of this  
section; and

(c) The Department shall be responsible for the implementation and administration of  
this section through the adoption and publication of rules, regulations and/or procedures deemed  
necessary for these purposes."

Section 2. This Act shall become effective July 1, 1996.

Section 3. The Department of Transportation shall continue to implement its current snow removal policy for those non-municipal residential communities south of the Chesapeake and Delaware Canal notwithstanding the passage of this Act.

Approved August 1, 1996

## CHAPTER 600

## FORMERLY

SENATE BILL NO. 346  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO UNLAWFUL SEXUAL INTERCOURSE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, illicit sexual activity between adult males and teenage girls is contributing to the high teenage pregnancy rates in Delaware and the nation; and

WHEREAS, roughly 12 percent of all babies born in this state are born by teenage girls; and

WHEREAS, from 1991-1993 there were 609 babies in Delaware by girls 16 1/2 years old or less; and

WHEREAS, nationally, 39 percent of 15-year-old mothers report the fathers of their babies are 20 years old or older; and

WHEREAS, many of these adult males are repeat offenders who have fathered more than one child by different teenage mothers, yet accepted little or no responsibility for their actions of for the support of their children; and

WHEREAS, in the United States, one in every 16 girls between the ages of 15 and 19 years has a child. In Delaware, approximately one in every eight children are born to a teenage mother; and

WHEREAS, \$ 69 million was spent on the consequences of teen pregnancy in Delaware in 1993; and

WHEREAS, society can no longer ignore or disregard statutory rape and the consequent increase in teenage pregnancies. The laws prohibiting adults from having sexual relations with persons under the age of 16 years must be more vigorously enforced; and

WHEREAS, adult males who have sexual intercourse with minor girls must be held more accountable for their conduct and must be required to accept responsibility under current law for their actions; and

WHEREAS, the State should impose more severe sanctions when the adult male is significantly older than the victim; and

WHEREAS, our state agencies and schools must recognize these cases as child abuse cases and make appropriate referrals to law enforcement; and

WHEREAS, it is the intent of the General Assembly to enhance the penalty for statutory rape when an adult is 10 years or older than the victim or when the victim is under the age of 14 and to make certain our current law prohibiting sexual intercourse with minor children by adults is rigorously enforced.

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY:

Section 1. This Act shall be referred to as the "Sexual Predator Act of 1996."

Section 3. Amend § 773, Title 11, Delaware Code, by deleting "." in subsection 2 and inserting "; or" and by inserting as new subsection (3) the following:

"(3) The victim is less than 16 years of age and the person is 10 years or older than the victim or the victim is less than 14 years old and the person is 19 years of age or older and is not otherwise subject to prosecution under § 775."

Section 4. Amend § 773, Title 11, Delaware Code by inserting after the words "Class C. Felony" as found in the Title of said section the words "; Class B Felony" and by inserting in the section after the words "Class C Felony" and before the "." the words "unless the person is guilty pursuant to subsection (3) of this section in which case Unlawful Sexual Intercourse in the third degree is a Class B Felony. Notwithstanding any provisions to the contrary, in cases where acts in violation of this section have resulted in the birth of a child who is in the custody and care of the victim or the victim's legal guardians, the court shall order that the Defendant, as a condition of any probation imposed pursuant to a conviction under this section, timely pay any child support ordered by the Family Court for such child."

Section 5. The Attorney General's Office, the Department of Health and Social Services, the Department of Services to Children Youth and Their Families, the Department of Public Instruction and law enforcement agencies statewide will establish a cooperative agreement, specifying the various roles each agency will play in making certain our laws governing unlawful sexual intercourse with minors are rigorously enforced. The Department of Public Safety, with cooperation from the above referenced agencies, shall report to the Governor and the General Assembly on enforcement efforts pursuant to this Act by June 1, 1998.

Approved August 1, 1996

CHAPTER 601

FORMERLY

SENATE SUBSTITUTE NO. 2

TO

SENATE BILL NO. 223

AS AMENDED BY SENATE AMENDMENT NOS. 1 AND 4

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO PUBLIC PROCUREMENT OF GOODS, MATERIALS AND SERVICES AND THE DEPARTMENT OF ADMINISTRATIVE SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. This Act shall be referred to as "The State Procurement Act."

Section 2. Amend § 6901, Title 29, Delaware Code by deleting it in its entirety and inserting in lieu thereof the following:

**"Subchapter I. General Provisions.**

**"§ 6901. Purpose.**

The purpose of this Act is to:

(a) Create a more efficient procurement process to better enable the State to obtain the highest quality goods, materials and services at the best possible price, thereby maximizing the purchasing value of public monies; and

(b) Create a single forum in which the procurement needs of state agencies and the technical and legal requirements of the Division of Purchasing are addressed simultaneously so as to increase mutual understanding, respect, trust, and fair and equitable treatment for all persons who deal with the state procurement process."

Section 3. Amend §6902, Title 29, Delaware Code by redesignating it as new "§ 6906" and inserting as new § 6902 the following:

**"§ 6902. Definitions.**

As used in this Act,

(a) "Agency" means every board, department, bureau, commission, person or group of persons or other authority which directly receives monies under any budget appropriation act or supplemental appropriation act and which was created and now exists or hereafter is created to:

(1) execute, supervise, control and/or administer governmental functions under the laws of this State, and/or

(2) to perform such governmental functions under the laws of this State, or to perform such other duties as may be prescribed; and/or

(3) to collect and/or use any taxes, fees, licenses, permits or other receipts for service or otherwise for the performance of any function or related to or supported in whole or in part by the laws of this State; and/or

(4) to administer any laws providing for the collection of taxes, fees, permits, licenses or other forms of receipts from any sources whatsoever for the use of the State or any Agency of the State

Agency shall include Delaware Technical and Community College and the Delaware State University but shall not include agencies receiving only grants-in-aid appropriations from the State and no other appropriations, as described herein, the University of Delaware, volunteer fire departments, and the Delaware Transit Corporation. Nothing in this Subsection shall be deemed to exempt any entity that is otherwise required to comply with § 6960 of this Title.

(b) 'Agency Head' means the top official in an Agency whether elected, appointed or otherwise. The Agency Head may delegate duties under this Act to a designee within the Agency.

(c) 'Agency Official' means any employee, consultant, person in the category of other personal service or any other person receiving compensation from the State, its agencies, municipalities, political subdivisions or school boards.

(d) 'Compensation' means the total amount paid by an Agency for professional services, including reimbursed expenses, unless otherwise stated in the contract.

(e) 'Contractor' means any person, partnership, firm, corporation, non-profit agency or other business association who has a contract with an Agency.

(f) 'Covered Agency' means any Agency except School Districts, Delaware Technical & Community College, the Delaware State University, the Legislative Branch of State government.

(g) 'Department' means the Department of Administrative Services, except as provided in § 6960 of this Title, in which case it shall mean the Department of Labor.

(h) 'Division' means the Division of Purchasing in the Department of Administrative Services.

(i) 'Firm' means a person, organization, partnership, limited partnership, corporation, association, non-profit agency or other business association.

(j) 'Local government unit' means any municipality incorporated in this State under the authority of the General Assembly and any of the three counties.

(k) 'Materiel' means materials, equipment, tools, supplies, or any other personal property, but does not include real property, or electric, gas, water, telephone, or similar utilities.

(l) 'Professional services' means services which generally require specialized education, training or knowledge and involve intellectual skills. Examples of professional services include but are not limited to engineering, environmental engineering, environmental monitoring, land surveying, landscape architecture, geology, architectural, archaeologists, architectural historians, historians, educational consultants, management, medical, teaching, planning, computer information management, financial, accounting, auditing, construction management, and arbitration services. Professional services subject to the provisions of § 2507 of Title 29 of the Delaware Code or which require compliance with Delaware Supreme Court Rule 52 or a substantially similar rule of another state shall not be included in this definition and shall not be subject to the provisions of this Act.

(m) 'Public building' means any edifice or building which is, or is to be, constructed, reconstructed, altered or repaired pursuant to a public works contract. It does not mean the act or process itself of constructing, reconstructing, altering or repairing.

(n) 'Public funds' means funds of the State, of any Agency within the State, of any public school district, of or from the United States government or of or from any department or representative body thereof.

(o) 'Public Works Contract' means construction, reconstruction, demolition, alteration and repair work and maintenance work paid for in whole or in part with public funds.

(p) 'Secretary' means for the purposes of this Act, the Secretary of the Department of Administrative Services, except as provided by § 6960 of this Title, in which case it shall mean the Secretary of the Department of Labor.

(q) 'User Group' means one or more Agency representatives who provides technical advice to the Division of Purchasing concerning the requirements of certain Materiel and non-professional services contracts.

(r) 'Volunteer Fire Department' means a volunteer fire department recognized as such by the State Fire Prevention Commission."

Section 4. Amend § 6903, § 6904, § 6905, Title 29, Delaware Code by deleting said sections in their entirety and inserting in lieu thereof the following:

**§ 6903. Violations and Penalties.**

(a) Any person, who, with intent to avoid compliance with this Act, willfully fragments or subdivides any contract for the purchase of materiel, non-professional services, public works or professional services, shall be subject to the penalties listed in this Section.

(b) Agency employees and representatives shall neither seek nor accept for themselves or others any gifts, favors, entertainment or privileges from any vendor or supplier who does or seeks to do business with any Agency.

(c) Each contract entered into by an Agency for professional services shall contain a prohibition against contingency fees as follows:

(1) The firm offering professional services swears that it has not employed or retained any company or person, working primarily for the firm offering professional services, to solicit or secure this agreement, by improperly influencing the Agency or any of its employees in any professional service procurement process; and

(2) The firm offering the professional service has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement; and

(3) For the violation of this provision, the Agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

(d) Any Agency official who offers to solicit or secure, or solicits or secures, any Agency or central contract and, is paid any fee, commission, percentage, gift or any other consideration, shall be subject to the penalties listed in this Section.

(e) Any individual or firm who offers, agrees, or contracts to improperly influence any Agency or its employees in the procurement of any Agency or central contract and, who is paid or is to be paid a fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or the making of an Agency or central contract, shall be subject to the penalties listed in this Section.

(f) Any individual or firm offering materiel and/or services which shall offer to pay, or is paid, any fee, commission, percentage, gift or any other consideration contingent upon, or resulting from, the award or making of any Agency or central contract shall be subject to the penalties listed in this Section

(g) Except for § 6960 of this Title for which the penalties and remedies enumerated in that Section shall apply, any individual or firm which commits a violation of this Act, as listed in this Section, shall be punished by a fine of not less than \$1,000 and not more than \$2,000, or by imprisonment for not more than 6 months, or both, and upon a second or subsequent conviction thereof, shall be punished by a fine of not less than \$2,000 and not more than \$5,000, or by imprisonment for not more than 1 year, or both. The Superior Court for the State shall have exclusive original jurisdiction over offenses listed in this Section.

(h) The remedies and penalties provided for in this Section are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions

of law including but not limited to State and/or federal criminal prosecutions, or common law or statutory actions brought by private parties and/or the provisions and penalties defined in Chapter 58 of this Title.

**§ 6904. Exceptions.**

(a) If any provision of this Act conflicts or is inconsistent with any statute, rule or regulation of the federal government applicable to a project or activity, the cost of which is to be paid or reimbursed in whole or in part by the federal government, and due to such conflict or inconsistency the availability of federal funds may be jeopardized, such provision shall not apply to such project or activity. If any provisions of this Chapter conflict or are inconsistent with Chapter 40, Title 31 of the Delaware Code, the provisions of Chapter 40, Title 31 of the Delaware Code shall prevail and govern.

(b) This Act shall not apply to any purchase of materiel from the federal government.

(c) This Act shall not apply to contracts for the transportation of school children. All proposed contracts for the transportation of school children shall be submitted to the State Board of Education by the Transportation Unit for its approval. The approval of the State Board of Education shall be by majority vote of the duly appointed members of such Board, and a failure of such majority vote, shall cause the rejection of the proposed contract with a corresponding return to the Transportation Unit of the Department of Public Instruction of such rejected contract and a request for a substituted contract to be submitted.

(d) This Act shall not apply to any purchase of library materials such as books, periodicals, subscriptions, and software by libraries of any Agency, nor shall this Act apply to the purchase of services by libraries of any Agency pursuant to Chapter 66 of this Title.

(e) If no State contract exists for a certain good or service, Covered Agencies may procure that certain good or service under another Agency's Contract so long as the arrangement is agreeable to all parties. Agencies, other than Covered Agencies, may also procure such goods or services under another Agency's contract when the arrangement is agreeable to all parties.

(f) Where, because of changed situations, unforeseen conditions, strikes, or acts of God, a change order is determined to be necessary and is requested by the Agency, and not specified in the Agency's solicitation or advertisement for bids and in the contract as awarded, the awarding Agency may issue a change order setting forth the change, addition or extra work required to be undertaken by the contractor on a public works contract, which shall not:

(1) Be subject to the competitive bidding requirements of this Act, or

(2) Invalidate the contract, provided that such change is within the scope of the contract as set forth in the standard specifications, special provisions or similar publication of the Agency.

(g) All material required by any Agency shall be purchased, except where hereinafter provided, and all work of a non-professional nature, except as hereinafter provided, which is not to be performed by employees of the Agency shall be performed under a contract entered into pursuant to this Subchapter and after competitive bidding as provided for in this Section except that an Agency may purchase Material or contract for work to be performed without competitive bidding in the following instances:

(1) When the purchased material will be used by the Delaware Industries for the Blind within the Department of Health and Social Services as raw material for goods and services, which the Program manufactures and provides for resale or the purchased material, will be used by the Business Enterprise Program of the Division for the Visually Impaired as supplies to operate the vending stands in the Program.

(2) When material or services are on the procurement list published by the commission for the purchase of products and services of the blind and other severely disabled individuals, those Materiel or services shall be purchased in accordance with the procedure described in § 9605 of Chapter 96 of Title 16;

(3) Where the purchased material or work which is the subject of the contract is necessary to enable the Department of Natural Resources and Environmental Control to engage in the preservation of the beaches of the Atlantic Ocean and Delaware Bay shoreline of Delaware in accordance with the Beach Preservation Act, Chapter 68 of Title 7. Notwithstanding the foregoing, any such purchase must be approved by the Budget Commission prior to the commencement of any purchase of material or work.

(h) This Act shall not apply to purchases of historical artifacts or art for the purpose of public display.

(i) A contract may be awarded without competition if the Agency Head, prior to the procurement, determines in writing that there is only one source for the required contract. Sole source procurement shall not be used unless there is sufficient evidence that there is only one source for the required contract and no other type of goods or service will satisfy the requirements of the Agency. The Agency shall examine cost or pricing data prior to an award under this Subsection. Sole source procurement shall be avoided, except when no reasonable alternative source exists. A written determination by the Agency for the sole source procurement shall be included in the Agency's contract file.

(j) This Act shall not apply to any purchase of educational materials and supplies by post-secondary educational institutions participating in and benefiting from special educational discount and cooperative programs.

(k) This Act shall not apply to the Wilmington Housing Authority in the procurement of goods and/or services when such goods and/or services are provided by primarily Wilmington Housing Authority resident owned businesses.

(l) This act shall not apply to the Office of the Commissioner of Elections or the several departments of Elections in the purchase of material or work which is the subject of the contract which is necessary to enable the Department of Elections to conduct a primary, general, special election or voter registration pursuant to Title 15.

#### § 6905. Failure to Comply with Contract; New Award; Supervision.

If any firm entering into a contract under the authority of this Act neglects or refuses to perform or fails to comply with the terms thereof, the Agency which signed the contract may terminate the contract and proceed to award a new contract in accordance with this Act or may suspend the surety on the performance bond to complete the contract in accordance with the terms of the performance bond.

Section 5. Amend § 6905, § 6908, § 6909, § 6910, § 6911, Title 29 of the Delaware Code to read said sections in their entirety and inserting in lieu thereof the following:

#### § 6907. Emergency Procedures and Critical Need for Professional Services.

(1) An Agency Head may waive any or all provisions of this Act to meet the critical needs of the Agency as required by emergency or other condition where it is determined to be in the best interest of the Agency. The Agency Head may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and avoided. An emergency condition creates an immediate and serious need for material and/or non-professional services that cannot be met through normal procurement methods for the protection of public health, safety, or property.

(2) Any procurement pursuant to this Subsection shall be limited to those materials and/or non-professional services necessary to satisfy the emergency.

(3) Any public works project contracted pursuant to this Subsection shall be subject to the provisions of § 6960 of this Title.

(4) Any public works project contracted pursuant to this Subsection shall be subject to the provisions of § 6962(c)(1)-(4) of this Title.

(4) A copy of each emergency determination processed under this procedure shall be kept on file by the Agency.

(b) In addition to the waiver provisions provided for in subsection (a), an Agency Head may waive any or all provisions of Subchapter V of this Title, to meet a critical need of the Agency as required by an emergency or other condition where it is determined to be in the best interest of the Agency. The Agency Head may determine a critical need exists by reason of conditions or contingencies that could not reasonably be foreseen and guarded against. A critical need creates a need for professional services that cannot be met through normal procurement methods.

(1) Any procurement pursuant to this Subsection shall be limited to those professional services necessary to satisfy the critical need.

(2) A copy of each critical need determination processed under this procedure shall be kept on file by the Agency.

#### **§ 6908. Division Powers and Duties.**

(a) In addition to the powers and duties prescribed by other Sections in this Code, the Division shall:

(1) Review and recommend improvements to the State's procurement process;

(2) Function as the contracting agent in central or joint contracting for State Agencies provided that, at a minimum, all contracts are awarded in conformance with the requirements of this Act. The Division is required to meet or exceed the requirements of the Agencies;

(3) Function as a resource for State Agencies by providing, on request, procurement information and/or assistance.

(4) Serve as a clearinghouse for procurement information for materiel and services for both Agencies and vendors;

(5) Promulgate rules and regulations to effect this Act. Such rules and regulations shall be promulgated according to the Administrative Procedures Act in Chapter 101 of this Title and shall be approved by the Contracting and Purchasing Advisory Council; and

(6) Assume such other powers, duties and functions as the Secretary of the Department may assign which are not otherwise inconsistent with the laws of this State.

(b) The Department shall not charge any Agency any fee for central contracting services. The Secretary of the Department may charge any Agency of this State, local government unit or volunteer fire departments within the State, for which the Department makes purchases, supplies, contractual services or to which it distributes materiel, a reasonable service charge. The Department shall deposit such charges into a special account to be used to effectuate the purposes of the Department.

#### **§ 6909. Special Requirements for Contracts Involving Environmental Statutes.**

All contracts covered under this Act shall make provisions for all federal and State anti-pollution, conservation and environmental statutes, rules and regulations, and county ordinances which will be involved in the execution of the contract.

#### **Subchapter II. Central Contracting.**

#### **§ 6910. Applicability.**

This Subchapter shall apply to all covered Agencies as defined in § 6902(f) of this Act.

#### **§ 6911. Authority and Responsibilities.**

(a) The Division shall act as the exclusive contracting agent for all purchases of materiel and non-professional services not subject to the small purchasing procedures made by contracting agencies and as outlined in this Subchapter and made by two or more Covered Agencies except as provided for in Subsection (d) of this Subchapter.

(b) The Division shall have the following responsibilities for central contracts:

- (1) assembling the bid specification package;
- (2) conducting the advertising, bidding and awarding of each contract;
- (3) resolving disagreements between vendors and Agencies; and
- (4) assuring that vendors and products meet the requirements of awarded contracts.

(c) Each Agency that participates in a central contract shall have the following responsibilities for the materiel or service purchased under that contract:

- (1) Providing and approving commodity specifications;
- (2) Participating in User Groups by requiring that appropriate Covered Agency staff attend User Group meetings, as described in § 6912 of this Act; and
- (3) Providing information concerning contract effectiveness to the Division.

(d) Covered Agencies shall exclusively use central contracts. A Covered Agency Head may exempt the Agency from a central contract only when all of the following conditions are met by the Covered Agency Head:

(1) Demonstration that participation in a central contract would negatively impact the operations of the Covered Agency. However, operations as used in this Subsection shall not include the fiscal impact to the Covered Agency;

(2) Demonstration that the Covered Agency has attempted to negotiate the specifications with the Division prior to the Covered Agency Head exempting the materiel or service, and

(3) Demonstration that the exemption is an exception to the Covered Agency's use of a central contract rather than a common practice.

Any exemption issued by an Agency Head under this Subsection shall not be a blanket exemption but shall only apply to an individual central contract.

(e) The Director of the Division may waive the requirement that a Covered Agency use a State contract in the event the Director deems such a waiver is in the best interest of the State."

Section 6. Amend existing § 6912, Title 29, Delaware Code by redesignating it as new "§ 6960" and by inserting as new § 6912 the following:

**"§ 6912. Covered Agency User Groups.**

(a) The Division shall establish, convene and chair User Groups for the purchase of a materiel or service, or group of materiel and/or services, by a central contract or contracts. Convention of a User Group may include, but is not limited to, a formal meeting, electronic mail among User Group members, and/or a teleconference among User Group members. The method by which the User Group convenes shall be agreed to by all User Group members.

(b) The Division shall provide reasonable opportunity for each Covered Agency to participate in a User Group if that Covered Agency anticipates the purchasing of materiel or service(s) or a group of materiel and/or services under a specific central contract to be written and bid. A Covered Agency not participating in a User Group shall not be grounds for an exception to the use of that central contract. A User Group shall perform at least the following functions for the materiel or service or group of materiel and/or services to be purchased by a central contract:

- (1) Make recommendations on the contents of the contract;
- (2) Rate vendors, materials and/or services;
- (3) Rate the effectiveness of the contract; and
- (4) Qualify a materiel and/or service."

Section 7 Amend §§ 6913 through 6922 and §§ 6930 through 6937, Title 29, Delaware Code by deleting said sections in their entirety and inserting in lieu thereof the following

**"§ 6913. Contracting and Purchasing Advisory Council.**

(a) There is established a Contracting and Purchasing Advisory Council to consist of all Covered Agency Heads and one additional member representing all Public School Districts. The Director of the Division shall be a non-voting member of the Council.

(b) The Secretary of the Department shall be the Council Chair.

(c) The purpose of the Council is to advise as to the effectiveness of and make recommendations for changes to the State's procurement laws, policies, and practices to the Secretary of the Department and the Director of the Division.

(d) The Council shall be responsible for:

(1) Recommending procurement policy and administrative procedures to the Secretary. The Secretary shall elicit the Council's comments before issuing policy statements, policy changes, administrative procedures, or administrative changes regarding this Act.

(2) Reporting annually to the Governor by December 31st of each year concerning the effectiveness of the State's procurement processes. This report shall include recommended changes to the State's procurement laws as may be necessary to improve the State's overall effectiveness;

(3) Reviewing vendor concerns regarding the overall procurement process and recommending appropriate action relating to these concerns; and

(4) Setting the dollar amount thresholds required in this Act. When setting these dollar amount thresholds, the Council shall take into consideration operational issues and inflation. Nothing in this Subsection shall effect the amounts set in § 6960 of this Title.

(e) A Contracting and Purchasing Committee shall also be established. The Division Director shall appoint representatives to the Committee, with the approval of the Council. The Division Director shall chair the Committee. The Committee shall staff the Council, monitor the effectiveness of the State's procurement process, recommend changes to the procurement process, policies, and procedures, and any other duties deemed necessary by the Council.

**§ 6914. Delegation of Centralized Contracting Authority.**

The Division may delegate its centralized contracting authority for specific materials and/or services or groups of materials and/or services to another Covered Agency with the Covered Agency's concurrence.

**§ 6915. Exceptions.**

(a) In a contract for professional services, public works or non-professional services, where the contract includes items that are a part of a central purchasing contract, those items shall not be subject to the purchasing requirements of this title.

(b) If a service or a materiel is a component part of a specific project that is part of another contract, then the requirements of this Subchapter shall not apply.

(c) This Section is not intended to allow Agencies to avoid the use of central purchasing contracts by contracting with a vendor under the auspices of procuring a good or service when the sole or partial purpose of such a contract is to procure, from that vendor, another good or service that is on a central purchasing contract.

### **Subchapter III. Materiel & Non-Professional Services.**

#### **§ 6922. Small Purchase Procedure.**

##### **(a) Applicability.**

Any State contract for which an Agency is a party for materiel or non-professional services, whose annual probable cost is less than the threshold amount(s) set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this Act, may be made under small purchase procedures established by the Secretary.

##### **(b) Procedure.**

The Secretary with the approval of the Contracting and Purchasing Advisory Council shall provide for a simplified administrative process for obtaining competitive prices for small purchases. This procedure shall be in writing and distributed to all agencies.

#### **§ 6923. Competitive Sealed Bidding.**

##### **(a) Applicability**

Any State contract for which an Agency is a party for materiel or non-professional services, whose annual probable cost is greater than the threshold amount(s) set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this Act, shall be made only through the use of competitive sealed bids.

##### **(b) Advertising Requirements.**

(1) If the probable cost of the materiel or non-professional service is estimated to annually exceed the threshold amount(s) set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this Act, the procurement shall be made only after public advertising and the receipt of sealed bids as provided for in this Subchapter. The advertisement for such bids shall be published at least once a week for 2 consecutive weeks in a newspaper published or circulated in each county of the State.

(2) The advertisement for bids shall State the name of the procuring Agency, indicate with reasonable accuracy the character, quantity and location of the work, or the character and quantity of materiel, the time and place for the opening of bids and where the specifications or descriptions may be obtained. The advertisement shall also state that the Agency may extend the time and place for opening of bids from that described in the advertisement, on not less than 2 calendar days' notice, by certified delivery, facsimile machine or other electronic means to those bidders who obtained copies of the specifications or descriptions.

##### **(c) Bid Openings**

(1) Bids shall be opened publicly at the time and place designated in the invitation to bid. The main purpose of the bid opening is to reveal the name(s) of the bidder(s), not to serve as a forum for determining the low bidder(s). The disclosure of additional information, including prices, shall be at the discretion of the procuring Agency until such time that the responsiveness of each bid has been determined.

(2) The contract shall be awarded within 30 calendar days of the bid opening to the lowest responsive and responsible bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation to bid, except that in the case of a public school district and its board or designee or the Department of Public Instruction, the contract shall be awarded within 60 days thereafter.

(3) The bids, bid summaries, and bid tabulations shall not be open for public inspection until after a contract has been awarded. Bids shall be unconditionally accepted without alteration. Bids shall be evaluated based on the requirements set forth in the invitation to bid. No criteria may be used in bid evaluations that are not set forth in the invitation to bid. After bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interests of this State or fair competition shall be permitted.

(d) Vendor Eligibility.

(1) A firm may be required to have a valid State of Delaware business license prior to the execution of an Agency contract.

(2) Vendors are responsible for reviewing all public advertisements which announce the invitation to bid for an Agency contract.

(3) To supplement the contract public notice, the Agency may compile and maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the firm is responsible concerning a particular procurement or otherwise capable of successfully performing a contract.

(4) Firms desiring to be included on the prospective vendors list shall notify the Agency. Upon notification, the Agency shall mail or otherwise provide the firm with a vendor registration form. The firm shall complete the vendor registration form and return it to the Agency. A vendor registration list shall not be used as a means to restrict competition.

(5) No cause of action shall accrue from any good faith effort to contact and distribute invitations to bid, amendments to invitations to bid as well as all correspondence utilizing the Agency's vendor eligibility list.

(6) Firms that fail to respond to solicitations for two consecutive procurement contracts for a particular item may be removed from the applicable vendors list. The Agency shall send notice of such a removal by mail or facsimile to the firm. Firms may be reinstated upon request.

(e) Invitation to Bid.

(1) The Agency shall make available invitations to bid at least 14 days before the time and date of the bid opening unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Agency.

(2) The invitation to bid shall include the following:

a. Instructions and information concerning the bid submission requirements, including the time, date, and place set for bid opening, and any other special information;

b. The description, specifications, evaluation criteria, delivery or performance schedule, and inspection and acceptance requirements for the contract;

c. The contract terms and conditions, including, but not limited to, warranty and bonding or other security requirements, as applicable.

(3) If the invitation to bid incorporates documents by reference the invitation to bid shall specify where such documents may be obtained or reviewed.

(4) An invitation to bid may require the submission of bid samples, descriptive literature, technical data and may require inspection or testing of a product before award.

(5) A copy of the invitation to bid shall be made available for public inspection at the Agency.

(f) Pre-bid Conferences.

An Agency may conduct a pre-bid conference within a reasonable time but not less than seven days before a bid opening to explain the requirements of an invitation to bid. An Agency may require mandatory attendance by bidders at such pre-bid conferences to qualify as a responsible and responsive bidder. Statements made at the pre-bid conference shall not be considered amendments to the invitation to bid unless a written amendment is issued pursuant to § 6923(g).

(g) Amendments to Invitations to Bid.

(1) An amendment to an invitation to bid shall be issued to:

- a. Make changes in the invitation to bids;
- b. Correct defects or ambiguities in the invitation to bid; and/or,
- c. Change the date, place, or time of the bid opening.

(2) Amendments to invitations to bid shall be so identified and shall be sent to all firms to whom the Agency distributed an invitation to bid.

(3) The Agency shall obtain verification of bidder receipt of all amendments issued.

(h) Withdrawal of Bids.

(1) A bidder may withdraw its bid at any time before bid opening if the withdrawal is received in writing before the bid opening at the location designated in the invitation for bids for receipt of bids. A bidder or its authorized representative may withdraw its bid in person if, before the bid opening, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

(2) All documents concerning a withdrawal of a bid shall be retained in the appropriate procurement file.

(3) After a bid opening, a firm may request in writing that its respective bid be withdrawn. Such a request may be allowed only upon the approval of the Agency. If withdrawal of a bid after bid opening is permitted or denied, the Agency shall prepare a written determination showing that the request was permitted or denied along with the reasons for such determination.

(i) Late Bids and Late Modifications.

(1) A bid or withdrawal of a bid is late if it is received at the location designated in the invitation to bid for receipt of bids after the time and date set for bid opening.

(2) Bidders submitting bids or withdrawals of bids that are late shall be notified as soon as practicable and the bid shall be returned unopened.

(3) Documentation concerning a late bid or late withdrawal of a bid shall be retained in the appropriate procurement file.

(j) Receipt, Opening, and Recording of Bids.

(1) Except as provided in § 6923(j)(2), each bid shall be time stamped upon receipt and stored by the Agency unopened in a secure place until the time and date set for bid opening.

(2) An envelope that is not marked as a bid or does not identify the bidder or solicitation may be opened solely for the purpose of identification. Record shall be made on the envelope of the reason for opening it, the date and time it was opened, the solicitation to which the bid responded and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the procurement file.

(3) Bids shall be opened publicly and in the presence of one or more witnesses at the time, date, and location designated in the invitation. Bid information shall be disclosed at the

public opening pursuant to § 6923(c)(1). The bid information made available at the public opening shall be recorded on a bid abstract. The name of the required witness shall also be recorded. The bid abstract shall be available for public inspection.

(4) Bids shall not be available for public inspection before contract award pursuant to § 6923(c)(3). After contract award, the bids shall be available for public inspection, except to the extent that withholding of information is permitted by Title 29 of the Delaware Code, Chapter 100, or otherwise permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions. The bidder shall include with this designation a Statement that explains and supports the firm's claim that the bid items identified as confidential contain trade secrets or other proprietary data.

(k) Bid Evaluation and Award.

(1) The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the invitation to bid. If the invitation to bid so provides, award may be made by individual line item, by group of line items, by County, zone or any other way designated by the Agency, or for the aggregate total of all line items, otherwise award shall be made in lump sum. A formal contract shall be executed with the successful bidder within 20 days after the award of the contract.

(2) A contract may be awarded to a firm other than the lowest responsible and responsive bidder if, in the opinion of the Agency, the interests of the State shall be better served by awarding the contract to some other bidder provided the Agency Head makes a written determination of the reason or reasons for granting the contract to a firm other than the lowest responsible and responsive bidder.

(3) A product acceptability evaluation may be conducted to determine whether a bidder's product meets the bid specifications. Any bidder's offer that does not meet the bid specifications shall be rejected as non-responsive.

(4) Bids shall be evaluated to determine which bidder offers the lowest cost to the Agency in accordance with the evaluation criteria set forth in the invitation to bid. Only objectively measurable criteria that are set forth in the invitation to bid shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, energy cost, ownership cost and other identifiable costs. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the Agency has available concerning future use. Prior unsatisfactory performance on a State contract by a bidder may be included in the evaluation criteria to determine if a bidder is responsible.

(5) A contract may not be awarded to a bidder submitting a higher quality item than that designated in the invitation for bids unless the bidder is also the lowest bidder as determined under this Section. The Agency may seek clarification of a bid, but negotiations are not permitted with any bidder.

(6) If 2 or more responsible firms bid an equal amount and such amount is the lowest bid, the Agency may award the contract to any 1 of them or reject all bids consistent with the provisions of this Section.

(7) A record showing the basis for determining the successful bidder shall be retained in the Agency procurement file.

(8) A written notice of award shall be sent to the successful bidder. For procurement greater than the threshold amount(s) set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this Act, each unsuccessful bidder shall be notified of the award. Notice of award shall be made available to the public.

(l) Only One Bid Received.

(1) If only one responsive bid is received to an invitation for bids, an award may be made to the single bidder if the Agency determines that:

a. The price submitted is fair and reasonable and other prospective bidders had reasonable opportunity to respond; or

b. There is not adequate time for re-solicitation.

(2) If only one responsive bid is received and the bid is rejected, the

Agency may:

a. Solicit new bids; or

b. Cancel the proposed procurement.

(m) Cancellation of Invitation To Bid.

An invitation to bid or other solicitation may be canceled or any or all bids may be rejected in whole or in part prior to the opening of bids as may be specified in the solicitation if it is in the best interest of the State. The reasons for the cancellation or rejection shall be made part of the procurement file.

(1) If an invitation to bid or other solicitation is canceled prior to the opening of bids, a notice of cancellation shall be sent to all bidders.

(2) Any bids that have been received shall be returned unopened to the bidders.

(n) Rejection of Individual Bids.

A bid may be rejected if:

(1) The bidder is determined to be non-responsive pursuant to § 6923(o); or

(2) The bid is non-responsive or non-responsible in accordance with § 6923(k); or

(3) It is otherwise not advantageous to the State.

Bidders whose bids are rejected under this Section shall be notified in writing about the rejection. Record of the rejection shall be made part of the procurement file.

(o) Responsiveness of Bidders.

An Agency shall determine that a bidder is responsive before awarding a contract to that bidder. Factors to be considered in determining if a bidder is responsible include:

(1) The bidder's financial, physical, personnel or other resources, including subcontracts,

(2) The bidder's record of performance and integrity;

(3) Whether the bidder is qualified legally to contract with the State; and

(4) Whether the bidder supplied all necessary information concerning its responsiveness.

The Agency may establish specific responsibility criteria for a particular procurement. Specific responsibility criteria shall be set forth in the solicitation. If an Agency determines that a bidder is non-responsive and/or non-responsible, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the affected bidder. The final determination shall be made part of the procurement file.

#### § 6924. Competitive Sealed Proposal - Request for Proposal Procedure.

(a) Applicability.

When the Agency Head makes a determination that the use of competitive sealed bidding is either not practical or not in the best interest of the State, a contract may be entered into through competitive sealed proposals. The determination to use competitive sealed proposals may be made if it is necessary to:

- (1) Use a contract other than a fixed-price type;
- (2) Conduct oral or written discussions with offerors concerning technical and price aspects of their proposals;
- (3) Afford offerors an opportunity to revise their proposals;
- (4) Compare the different price, quality, and contractual factors of the proposals submitted;
- (5) Award a contract in which price is not the determining factor; or
- (6) The Agency is unable to draft specifications in sufficient detail to be applicable to competitive sealed bidding.

(b) Advertising Requirements.

(1) Proposals shall be solicited through a request for proposal which shall be issued and shall include the location where proposals are to be received and the date and time the proposals are to be opened.

(2) Adequate public notice of the request for proposals shall be given in the same manner as provided in § 6923(b).

(3) Proposals shall be opened publicly at the time and place designated in the request for proposals. The name of each offeror, and such other relevant information as is specified in the request for proposals shall be read publicly and recorded in accordance with the request for proposal promulgated by the Agency. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation.

(4) The request for proposals shall state the relative importance of price and other evaluation factors.

(5) Offerors intending to submit proposals may be afforded an opportunity for discussion for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and amending proposals, and such amendments may be permitted after submissions and before award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(6) The award shall be made in writing to the responsible offeror whose proposal is determined to be the most advantageous to the State taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation [The award of a contract for goods and/or services may be made upon criteria which do not include price. The contract file shall contain the basis on which the award is made.]

(c) Request For Proposals.

(1) A request for proposals shall set forth those factors listed in § 6923(c) that are applicable and shall also state:

a. The type of materiel or services required and a description of the work involved;

- b. The type of contract to be used;
- c. That offerors may designate as trade secrets or proprietary data portions of the proposals;
- d. That discussions may be conducted with offerors who submit proposals determined to be likely to be selected for award;
- e. The minimum information that the proposal must contain; and
- f. The closing date and time for receipt of proposals.

(2) A request for proposals shall be issued at least 14 calendar days before the closing date and time for receipt of proposals unless a shorter time is determined necessary in writing by the Agency.

(3) Notice of the request for proposals shall be issued in accordance with § 6923(b).

(4) Vendor lists compiled and maintained in accordance with § 6923(d) may serve as a method for soliciting competitive sealed proposals.

(5) Amendments to requests for proposals shall be made in accordance with § 6923(g).

(d) Pre-proposal Conferences.

Pre-proposal conferences may be convened in accordance with § 6923(f).

(e) Late Proposals or Late Withdrawals.

(1) A proposal received after the closing date and time for receipt of proposals is late and shall not be considered. A best and final offer received after the closing date and time for receipt of best and final offers is late and shall not be considered.

(2) No offeror shall be permitted to make a modification to its original proposal after the date and time for the receipt of proposals and before negotiations start pursuant to § 6924(g).

(3) A modification of a proposal resulting from an amendment issued after the closing date and time for receipt of proposals or a modification of a proposal resulting from discussions during negotiations shall be considered if received by the closing date and time set forth in the amendment or by the closing date and time for submission of best and final offers, whichever is applicable. If the modifications described in this subsection are received after the respective date and time described in this subsection, the modifications are late and shall not be considered by the Agency.

(f) Evaluation of Proposals.

(1) Each Agency shall establish written administrative procedures for the evaluation of the proposals.

(2) For the purpose of conducting negotiations, the Agency shall determine, in accordance with § 6924(g), that proposals are either likely to be selected for award or unacceptable. A determination that a proposal is unacceptable shall be in writing, state the basis of the determination and be retained in the procurement file. If the Agency determines that an offeror's proposal is unacceptable, the Agency shall notify that offeror of the determination and that the offeror shall not be afforded an opportunity to modify its offer.

(g) Negotiations with Individual Offerors.

All agencies shall have a right to negotiate with individual offerors after their proposals are opened. The Agency shall establish a committee, procedures and schedules for conducting

negotiations. Disclosure of one offeror's price to another and any information derived from competing proposals is prohibited.

(h) Best and Final Offers.

If negotiations are conducted pursuant to § 6924(g), the Agency shall issue a written request for best and final offers. The request shall set forth the date, time, and place for the submission of best and final offers. The request for best and final offers shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer. Best and final offers shall be requested only once, unless the Agency makes a written determination that it is advantageous to the State to conduct further negotiations or change the State's requirements.

(i) Mistakes in Proposals.

Prior to the time and date set for receipt of best and final offers, any offeror with whom negotiations have been held may withdraw the offer or correct any mistake by modifying the offer.

(j) Contract Award.

(1) The contract shall be awarded within 90 days of the closing date and time advertised in the request for proposals. The Agency shall award a contract to the offeror whose proposal is determined in writing to be most advantageous to the State based on the factors set forth in the request for proposals. The determination shall explain the basis of award.

(2) The Agency shall notify each unsuccessful offeror in writing of the award.

(3) After contract award, the proposals shall be open for public inspection in accordance with § 6923(j)(4).

(4) A formal contract shall be executed with the successful firm within 20 days after the award of the contract.

(k) Cancellation of Requests for Proposals.

A request for proposals or other solicitation may be canceled in whole or in part prior to the opening of proposals as may be specified in the solicitation if it is in the best interest of the State. The reasons for the cancellation shall be made part of the procurement file.

If a solicitation is canceled prior to the opening of proposals, a notice of cancellation shall be sent to all offerors, and any proposals that have been received shall be returned unopened to the offerors.

(l) Rejection of Individual Proposals.

A proposal or quotation may be rejected for one or more of the following reasons:

(1) The person responding to the solicitation is determined to be non-responsive or non-responsible pursuant to § 6924(m);

(2) It is unacceptable;

(3) The proposed price is unreasonable; or

(4) It is otherwise not advantageous to the State.

Offerors whose proposals are rejected under this Section shall be notified in writing about the rejection. Record of the rejection shall be made part of the procurement file. The reasons for the rejection shall be stated in the determination.

(m) Responsibility of Offerors.

An Agency shall determine that an offeror is responsible before awarding a contract to that offeror. Factors to be considered in determining if an offeror is responsible include:

- (1) The offeror's financial, physical, personnel or other resources, including subcontracts;
- (2) The offeror's record of performance and integrity;
- (3) Whether the offeror is qualified legally to contract with the State;
- (4) Whether the offeror supplied all necessary information concerning its responsibility; and
- (5) Any other specific criteria for a particular procurement which an Agency may establish provided that the criteria shall be set forth in the solicitation and is otherwise in conformity with state and/or federal law.

If an Agency determines that an offeror is non-responsive and/or non-responsible the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the affected offeror. The final determination shall be made part of the procurement file.

#### **§ 6925. Sole Source Procurement.**

(a) A contract may be awarded for materiel or non-professional services without competition if the Agency Head, prior to the procurement, determines in writing that there is only one source for the required materiel or non-professional service. Sole source procurement shall not be used unless there is sufficient evidence that there is only one source for the required material or service and that no other type of material or service will satisfy the requirements of the Agency. The Agency shall examine cost or pricing data prior to an award under this Section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the Agency stating the basis for the sole source procurement shall be included in the Agency contract file. Textbooks and related instructional materials are sole source purchases.

(b) An Agency seeking a sole source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made to determine the availability of any other source and an explanation of the procurement need. The Agency may, for confirmation, submit this documentation to the Division for review and comment prior to the intended date of award.

(c) The Agency shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the Agency. The Agency shall enter into a formal contract stating the terms and conditions of the procurement.

#### **§ 6926. Multiple Source Contracting.**

An Agency may award a contract for a particular materiel or non-professional service to 2 or more firms if the Agency Head makes a determination that such an award is in the best interest of the State. If such a determination is made, the advertisement shall include a notification of the right of the Agency to make such an award and the criteria upon which such an award shall be based.

#### **§ 6927. Bid and Contract Security.**

- (a) Bid Bonds.

For the purchase of materiel and non-professional services, in accordance with § 6923, the Agency or a representative delegated by the Agency may, at their discretion, require that bids be accompanied by

(1) A deposit of either a good and sufficient bond to the State for the benefit of the Agency involved; such bonds shall be issued with a corporate surety authorized to do business in this State and the form of the bond and the surety shall be approved by the Agency; or

(2) A security of the bidder assigned to the Agency for a sum equal to at least 10% of the bid.

The bid bond or bid security need not be for a specific sum but may be stated to be for a sum equal to 10% of the bid to which it relates. A bid bond or bid security may be stated as a certain stated sum provided that the sum is equal to or greater than 10% of the bid.

Bid or performance bonds shall not be used as a substitute for a determination of bidder responsibility. If a bid is withdrawn at any time before bid opening, any bid security shall be returned to the bidder.

(b) Loss of Bid Bond as Damages.

In the event of any successful bidder refusing or neglecting to execute a formal contract and bond within 20 days of awarding the contract, the bid bond or security deposited by the successful bidder shall be taken and become the absolute property of the State for the benefit of the Agency as liquidated damages. Such damages shall neither constitute a forfeiture nor a penalty and shall be deposited with the Secretary of Finance. Such monies pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund. The contracting Agency may award the contract to the next lowest responsible bidder or re-advertise for new bids.

(c) Return of Bid Bond.

Upon the execution of a formal contract and performance bond, the bid bond shall be returned to the successful bidder.

(d) Performance Bonds.

Simultaneous with the execution of the formal contract where required by § 6923(k)(1) and § 6924(j)(1), the procuring Agency may require the successful bidder to execute a good and sufficient bond to the State for the benefit of the Agency. Such performance bonds shall:

(1) Be with a corporate surety authorized to do business in this State; and

(2) Be in a sum equal to 100 percent of the contract award, except as otherwise provided in this subsection.

Contracts for the purchase of materiel with a value less than the threshold amount(s) established by the Contracting and Purchasing Advisory Council may reduce or waive this bond requirement from the successful bidder. Such reduction or waiver shall be stated in the bid specifications.

(e) Contents of Performance Bonds.

The bond shall be conditioned upon the faithful compliance and performance by the successful bidder of each and every term and condition of the contract and the proposal, plans, and specifications thereof. Each term and condition shall be met at the time and in the manner prescribed by the contract, and the specifications, including the payment in full, to every person furnishing materiel or performing labor in the performance of the contract, of all sums of money due him for such labor and materiel. The bond shall also contain the successful bidder's guarantee to indemnify and save harmless the State and the Agency from all costs, damages and expenses growing out of or by reason of the successful bidder's failure to comply and perform the work and complete the contract in accordance with the contract.

(f) Invoking a Performance Bond.

The Agency may, when it considers that the interests of the State so require, cause judgment to be confessed upon the bond. All sums received through confession of judgment shall be

deposited with the Secretary of Finance for the credit of the Agency. Such monies pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund. Every person furnishing materiel or performing labor under the contract for which the successful bidder is liable may maintain an action on the bond for his own use in the name of the State or the contracting county in any court of competent jurisdiction for the recovery of such sum or sums as may be due such person from the successful bidder, but if the bond so provides, no suit shall be commenced after the expiration of 1 year following the date on which the successful bidder ceased work on the contract otherwise suits may be commenced at any time within 3 years following the date the last work was done on the contract. No person or surety, in any action brought under this Section, or on the bond required in this Section, shall assert as a defense to such action the claim that the bond given pursuant to this Section contained a limitation or restriction not provided for by this Section.

(g) Other Security for Contracts Under Threshold Amount(s).

Contracts for the purchase of materiel and non-professional services valued less than the threshold amount(s) set by the Contracting and Purchasing Advisory Council may contain a waiver of the bond requirement provided that the successful vendor post with the State an irrevocable letter of credit or other suitable or readily collectible financial security for the project. Such letter of credit or other security shall be issued for a term commencing simultaneously with the execution of the formal contract and terminating no later than 3 years, subsequent to the date of delivery of such materiel or non-professional service or to the extent of the warranty period, whichever is greater. In no event shall such security expire without the express written approval of the State. Such waiver as described in this paragraph shall be Stated in the bid specifications.

(h) Waivers from Performance Bonds.

On a contract for the purchase of a materiel or non-professional service, the State may, at its discretion, reduce or waive the bond or other form of security. Such waiver shall be Stated in the bid specifications.

(i) In the case of bids submitted to Agencies other than any county of this state and other than any public school district, wherever security is required under this Section, the vendor shall also supply with its bid its taxpayer identification number (i.e., federal employer identification number or social security number) or a Delaware business license number and, should the vendor be awarded a contract, such vendor shall provide to the Agency the taxpayer identification or Delaware business license numbers of such subcontractors. Such numbers shall be provided on the later of the date on which such subcontractor is required to be identified or the time the contract is executed. The Agency shall report to the Division of Revenue each vendor selected for award within fifteen (15) days of execution of the contract and each subcontractor within fifteen (15) days of such contractor having been identified to the Agency or on the date of execution of the contract, whichever, is later, unless the Director of the Division of Revenue has notified the Agency of criteria according to which, in the Director's discretion, reporting is not required, and the contract meets such criteria.

**§ 6928. Failure to Comply With Contract.**

If any firm entering into a contract under the authority of this Act neglects or refuses to perform it or fails to comply with the terms thereof, the Agency may terminate the contract and proceed to award a new contract in accordance with this Act or the Agency may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond. Nothing herein shall preclude the Agency from pursuing additional remedies as otherwise provided by law.

**§ 6929. Contract Insurance and Contract Liability.**

In addition to bond requirements as stated in Section § 6927, each successful bidder shall purchase adequate insurance for the performance of the contract and, by submission of a bid, agrees to indemnify and save harmless and to defend all legal or equitable actions brought against the State, any Agency, officer and/or employee of the State, for and from all claims of liability which is or may be the result of the successful bidder's actions during the performance of the contract. The

purchase or non-purchase of such insurance or the involvement of the successful bidder in any legal or equitable defense of any action brought against the successful bidder based upon work performed pursuant to the contract, will not waive any defense which the State, its Agencies, and their respective officers, employees, and agents might otherwise have against such claims, specifically including the defense of sovereign immunity, where applicable, and by the terms of this Section, the State, and all agencies, officers and employees thereof shall not be financially responsible for the consequences of work performed, pursuant to said contract.

**§ 6930. Right to Audit Records.**

An Agency shall have the right to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of 3 years from the date of final payment under the prime contract and by the subcontractor for a period of 3 years from the date of final payment under the subcontract.

**§ 6931. Procurement of Information and Telecommunications Systems.**

All information regarding the procurement of information and telecommunication technology, as prescribed by the Executive Director of the Office of Information Systems, shall be submitted to the Office of Information Systems no later than 90 days from the receipt of such materiel. The acquisition of computer information systems shall be governed by 29 Del. C. Chapter 63.

**§ 6932. Maximum Practicable Competition.**

Descriptions or specifications shall not use a brand or trade name except as an indication of the type and quality of materiel and in all such cases shall contain the words "or approved equal." All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Agency's needs and shall not be unduly restrictive.

**§ 6933. Authorization for Cooperative Purchasing.**

The Division may, with written approval of the Secretary, participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of materiel or non-professional services with one or more public procurement units either within the State or with another State in accordance with an agreement entered into between the participants.

**§ 6934. Purchase of Used Materiel or Equipment.**

Any Agency may purchase used equipment or other materiel by negotiated purchase, rather than by competitive bidding, as provided in this Act, if it is demonstrated to the satisfaction of the Agency Head that the negotiated price is reasonable for the intended use.

**§ 6935. Purchases Using Federal Contracts.**

The Secretary may enter into negotiations with various manufacturers or distributors and award contracts which will enable agencies and local governments to purchase materiel at prices approved by the General Services Administration of the United States government or its successor.

**§ 6936. Special Requirements for Financial Contracts.**

No contract shall be awarded which includes the transportation, handling or storage of monies, including lawful currency and coin, negotiable and nonnegotiable securities, stocks, bonds, coupons and things of unusual value unless the successful bidder shall have at the time of the award of the contract, a valid license as required by Chapter 32, Title 5 of the Delaware Code. At the time of the submission of its bid, the bidder shall provide evidence of possession of such license or evidence that application for such license was made with the State Banking Commissioner and all fees required by such Chapter 32 of Title 5 had been paid."

Section 8. Amend newly designated § 6960, Title 29, Delaware Code by deleting the caption of said section and replacing it with the following:

**"Subchapter IV. Public Works Contracting.**

**§ 6960. Prevailing Wage Requirements.**

Section 9. Amend Chapter 69, Title 29 of the Delaware Code by inserting after newly designated § 6960 the following

**"§ 6961. Small Public Works Contract Procedures.**

(a) Applicability

Any State contract for which an Agency is a party and for which the probable cost is less than or equal to the threshold amount(s) set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this Act for small public works contracts shall be subject to the provisions of this Section.

(b) Procedure

All contracts entered into pursuant to this Section shall follow the procedures as prescribed by the Secretary pursuant to § 6922 of this Act

(c) Bid and Performance Bonds as authorized in § 6962 may be made a requirement by the Agency for contracts made pursuant to this Section

**§ 6962. Large Public Works Contract Procedures.**

(a) Applicability

Any State contract for which an Agency is a party and for which the probable cost is greater than the amount set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this Act for small public works contracts shall be subject to the provisions of this Section

(b) Advertising Requirements.

Each Agency shall publicly announce, not less than once a week for 2 consecutive weeks in a newspaper published or circulated in each county of the State, each public works contract. Any Agency may also maintain a register of prospective bidders which may be used to provide direct notification of contracts to be bid. This register shall not be used in a manner which will limit the competitiveness of the bidding process described in this Subchapter. No Agency shall be subject to cause of action or be otherwise liable for any errors or omissions in administering a bid registry. The public announcement shall also state the nature of the contract under the following conditions:

(1) If the Agency requires all bidders to be registered or pre-qualified in order to receive bidding documents for the proposed contract, the announcement shall state in general terms the character and location of the work and bid and performance bond requirements. If the Agency requires pre-qualification of subcontractors in its invitation to bid, no contractor shall list a subcontractor in its subcontractor listing who has not already been pre-qualified by the Agency.

(2) If the Agency does not require bidder registration or prequalification for the proposed contract, the announcement shall state with reasonable accuracy the character, quantity, location of the work as well as bid and performance bond requirements. The public announcement shall also state that the Agency may extend the time and place for the opening of bids from that described in the announcement. Such extension shall not take place unless at least 2 calendar days notice, by certified delivery, facsimile transmission or by other verifiable electronic means is sent to those bidders who obtained copies of the plans and specifications or contract descriptions.

(c) Bidder Prequalification Requirements

(1) An Agency may require any firm proposing to bid on a contract to answer a questionnaire and file a financial statement containing a complete statement of that firm's financial ability and experience in performing such work.

(2) If the Agency is not satisfied with the sufficiency of the answers to the questionnaire or the financial statement, the Agency may refuse to furnish to the firm the plans and specifications for the work and that firm's bid may be disregarded.

(3) No action of any nature shall lie against any Agency or its employees because of actions prescribed in (c)(1) and (c)(2) of this Section.

(d) Bid Specifications and Plans Requirements.

(1) Preparation of Plans and Specifications and Approvals.

The contracting Agency shall cause suitable plans and specifications to be prepared for all contracts pursuant to this Section. All plans and specifications shall be prepared by registered and licensed architects and/or engineers who shall sign the plans and specifications and affix their seals thereto. This requirement may be waived if:

a. The work to be covered by the public works contract is to be performed in accordance with identical plans and specifications similarly signed and sealed pursuant to which previous public works contracts have been awarded under this Subchapter. Any architect and/or engineer who signed and sealed the original of such identical plan(s) will have no liability arising from the use of those plans other than the use contemplated by the contract pursuant to which the original copies of such plans was created, unless such architect and/or engineer reviews and approves such different use; or

b. The project does not require architectural and engineering services and the Agency Head waives in writing the use of such services.

(2) Agency Assistance.

An Agency may retain, in accordance with Subchapter V. of this Chapter, the professional services of a general contractor or other qualified firm to assist in cost estimation, economic design analysis and construction.

(3) Prohibition of Brand Specification.

The description of work and/or materiel, and the plans and specifications, shall not use a brand or trade name, except as an indication of the type or quality of materiel, and in all such limited cases shall contain the words "or approved equal."

(4) Special Provisions

a. Anti-pollution, Conservation, or Environmental Measures not covered by Contract Specifications.

i. The description of the materiel and the plans and specifications for the work issued by the Agency shall set forth those provisions of federal, State and local statutes, ordinances, rules and regulations respecting anti-pollution, conservation and environmental protection which affect the project or projects for which such solicitations or bids are sought.

ii. If the successful bidder must undertake anti-pollution, conservation or environmental protection work not specified in the Agency's plans and specifications or descriptions of materiel, including measures required by the enactment of new or the amendment of existing statutes, ordinances, rules or regulations occurring after the submission of the successful bid or quotation, the awarding Agency shall issue a change order, as provided for in § 6963 of this Subchapter, setting forth the additional measures that must be undertaken.

iii. Cost

The cost of such a change order to the awarding Agency shall be determined in accordance with the contract for change orders or force accounts. If no such provision is set forth in the contract, then the cost to the awarding Agency shall be the contractor's costs for wages, labor costs other than wages, wage taxes, materiel, equipment rentals, insurance

and subcontracts attributable to the additional activity plus a reasonable sum for overhead and profit.

iv. Authorization

Written authorization by the Agency is to be given to the successful bidder prior to his undertaking such additional activity. Costs incurred by the successful bidder for additional work performed without prior approval shall not be approved for payment by the Agency.

b. Preference for Delaware Labor.

In the construction of all public works for the State or any political subdivision thereof, or by firms contracting with the State or any political subdivision thereof, preference in employment of laborers, workmen or mechanics shall be given to bona fide legal citizens of the State who have established citizenship by residence of at least 90 days in the State. Each public works contract for the construction of public works for the State or any political subdivision thereof shall contain a stipulation that any person, company, or corporation who violates this Section shall pay a penalty to the Secretary of Finance equal to the amount of compensation paid to any person in violation of this Section.

(5) Retainages and Substitution of Securities.

a. Authority to Withhold Contract Retainage.

Agencies may retain a portion of the payments to be made to a contractor for work performed pursuant to a public works contract. The percentage of the value of work performed which may be retained shall be established for each particular contract in the contract bidding documents and shall be incorporated into the contract. The percentage retained shall be 5 percent of the value of the work completed by the contractor under the contract. Upon completion of the work under the contract, the Agency may release 60% of the amount then retained. The balance of the amount retained will be held until all reports required of the contractor are received and final payment is authorized by the Agency.

The Agency, may, at its option, retain temporarily or permanently a small amount and may cause the contractor to be paid temporarily or permanently, from time to time, such portion of the amount retained as it deems equitable. The contractor shall be paid for all work that is due to him under the contract except for the amount retained.

b. Procedures Requirement.

Agencies shall establish standard procedures and regulations for the administration of contract retainages prior to entering into contracts which require retainages. All Agency procedures shall provide for contract retainage and substitution of securities for retainage.

c. Substitution of Securities.

i. The contractor under a public works contract, with the approval of the Agency, may deposit securities as authorized by this Section in substitution for monies being withheld from him as retainage. Securities allowable for substitution of retainage shall be: United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates of Indebtedness or United States Treasury Bills; Bonds or notes of the State; Bonds of any political subdivision of the State; or Certificates of Deposit from State or national banks located in this State; or any letter of credit or other security approved by the Agency.

ii. The contractor shall have the right to withdraw and take all or portions of the monies being retained from him under the contract by depositing securities in substitution for such monies. The contractor may do so only in accordance with the Agency's standard procedures and mechanisms. Such substitution shall be approved by the Agency only if the aggregate market value of the securities are at least as great as the contract retainages being withdrawn.

iii. A contractor may substitute cash for and receive back, all or part of the securities on deposit from the contractor. The cash must at least have the same value as the market value of the securities received back from the Agency.

iv. The contractor shall be entitled to receive, in all events, all interest and income earned on the securities deposited by him in substitution for contract retainage. If the securities deposited are in the form of coupon bonds, the Agency or the escrow agent designated by it and holding the deposited securities, shall deliver each coupon to the contractor as it matures.

v. All securities shall be released, delivered and paid over to the contractor at such time as cash monies being retained from him would have been released, delivered and paid over to the contractor under the public works contract if there had been no substitution for the cash monies.

vi. All costs of depositing and maintaining securities as provided for in this Section, shall be borne by the contractor.

vii. No Agency shall have any duty to invest monies being retained by it from a contractor under a public works contract in any interest bearing account or to establish any procedures or mechanisms for any such investment.

viii. Notwithstanding any other provisions of this Section, any contracting Agency may deny the contractor on any public works contract permission to substitute securities for monies being held as retainages. This action shall be taken only for good cause and when the Agency deems it to be in the best interest of the contracting Agency. Written notice shall be given to the contractor and a hearing shall be held by the Agency showing cause for such denial if requested in writing by the contractor. Denial of such substitution shall be for a stated period of time, not to exceed a period of 3 years, and shall continue until the end of the stated time period or until the contractor has successfully completed all outstanding public works contracts without forfeiting any part of the retainage held by the Agency whichever occurs first.

#### (6) Partial Payments

Any public works contract executed by any Agency may provide for partial payments with respect to materials placed along or upon the sites or stored at secured locations which are suitable for use in the performance of the contract. When approved by the Agency, partial payments may include the values of tested and acceptable materials of a non-perishable, non-contaminative nature which have been produced or furnished for incorporation as a permanent part of work yet to be completed, provided acceptable provisions have been made for storage. An allowance made for materials on hand will not exceed the delivered cost of the materials as verified by invoices furnished by the contractor, nor will it exceed the contract bid price for the materials complete in place.

#### (7) Equality of Employment Opportunity on Public Works

a. As a condition of the awarding of any contract for public works, in whole or in part by State appropriation, such contracts shall include the following provisions:

During the performance of this contract, the contractor agrees as follows:

i. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The contractor will take positive steps to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting Agency setting forth this nondiscrimination clause.

ii The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.

b The Secretary of the Department of Labor shall be responsible for the administration of this provision and shall adopt such rules and regulations and issue such orders as deemed necessary to achieve the purposes thereof, provided that no requirement established hereby shall be in conflict with § 6904 of this Title.

#### (8) Bid Bonding Requirements

a All bids shall be accompanied by a deposit of either a good and sufficient bond to the Agency for the benefit of the Agency, with corporate surety authorized to do business in this State, the form of the bond and the surety to be approved by the Agency, or a security of the bidder assigned to the Agency, for a sum equal to at least 10% of the bid. The bid bond need not be for a specific sum but may be stated to be for a sum equal to 10% of the bid to which it relates and not to exceed a certain stated sum, if said sum is equal to at least 10% of the bid.

b Upon the execution of a formal contract and performance bond, the bid bond or security shall be returned to the successful bidder. The security of the unsuccessful bidders shall be returned to them immediately upon the awarding of the contract or the rejection of all bids, but in no event later than 30 days after the opening of bids with the exception of School Districts and the Department of Public Instruction which shall be no more than 60 days.

#### c Loss of Bid Bond as Damages

In the event of any successful bidder refusing or neglecting to execute a formal contract and bond within 20 days of the awarding of the contract, the bid bond or security deposited by the successful bidder shall be taken and become the absolute property of the State for the benefit of the Agency as liquidated damages. Such damages shall neither constitute a forfeiture nor a penalty and shall be deposited with the Secretary of Finance. Such monies pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund. The contracting Agency may award the contract to the next lowest responsible bidder or re-advertise for new bids.

d In the case of bids submitted to Agencies other than any county of this state and other than any public school district, wherever security is required under this Section, the vendor shall also supply with its bid its taxpayer identification number (i.e., federal employer identification number or social security number) or a Delaware business license number and, should the vendor be awarded a contract, such vendor shall provide to the Agency the taxpayer identification or Delaware business license numbers of such subcontractors. Such numbers shall be provided on the later of the date on which such subcontractor is required to be identified or the time the contract is executed. The Agency shall report to the Division of Revenue each vendor selected for award within fifteen (15) days of execution of the contract and each subcontractor within fifteen (15) days of such contractor having been identified to the Agency or on the date of execution of the contract, whichever, is later, unless the Director of the Division of Revenue has notified the Agency of criteria according to which, in the Director's discretion, reporting is not required, and the contract meets such criteria.

#### (9) Performance Bonding Requirements

a Simultaneous with the execution of the formal contract, the successful bidder shall also execute a good and sufficient bond to the contracting Agency for the benefit of the Agency, with corporate surety authorized to do business in this State, in a sum equal to 100 percent of the contract price.

b The bond shall be conditioned upon the faithful compliance and performance by the successful bidder of each and every term and condition of the contract and the proposal and plans and specifications thereof, at the time and in the manner prescribed by the contract and the plans and specifications, including the payment in full, to every firm furnishing material or performing labor in the performance of the contract, of all sums of money due it for

such labor or materiel. The bond shall also contain the successful bidder's guarantee to indemnify and save harmless the Agency from all costs, damages and expenses growing out of or by reason of the successful bidder's failure to comply and perform the work and complete the contract in accordance with the contract.

c. The Agency may, when it considers that the interests of the Agency so require, cause judgment to be confessed upon the bond. All sums received through confession of judgment shall be paid for the credit of the Agency to the Secretary of Finance or to the Chief Financial Officer of the Agency if it is not a State Agency.

d. Every firm furnishing materiel or performing labor under the contract for which the successful bidder is liable may maintain an action on the bond for its own use in the name of the Agency in any court of competent jurisdiction for the recovery of such sum or sums as may be due such firm from the successful bidder, but if the bond so provides, no suit shall be commenced after the expiration of 1 year following the date on which the successful bidder ceased work on the contract. Otherwise, suits may be commenced at any time within 3 years following the date the last work was done on the contract.

e. No firm or surety, in any action brought under this Section, or on the bond required by this Section, shall assert as a defense to such action the claim that the bond given pursuant to this Section contained a limitation or restriction not provided for by this Section.

f. In the event of defaults of its contracts the money collected on the performance bonds shall be utilized by the contracting Agency for the projects for which the performance bonds were issued. All performance bond proceeds received shall be deposited with the Secretary of Finance for the credit of the Agency. Such monies pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund.

g. In addition to the bond, letter of credit or other financial security posted by the successful bidder in conjunction with the execution of the formal contract, each successful bidder, regardless of the type of the security posted or waived, as the case may be, must purchase adequate insurance for the performance of the contract and, by submission of a bid, does agree to indemnify and save harmless and to defend all legal or equitable actions brought against the Agency or officer or employee of the Agency, for and from all claims of liability which is or may be the result of the successful bidder's actions, during the performance of the contract. The purchase or non-purchase of such insurance or the involvement of the successful bidder in any legal or equitable defense of any action brought against the successful bidder based upon work performed pursuant to the contract, shall not waive any defense which the Agency and its officers and employees might otherwise have to such claims, specifically including the defense of sovereign immunity, where applicable, and by the terms of this Section, the Agency and its officers and employees shall not be financially responsible for the consequences of work performed, pursuant to said contract.

h. Contracts may contain a waiver of the bond requirement, provided, however, that the successful bidder post with the contracting Agency an irrevocable letter of credit or other suitable or readily collectible financial security for the project. Such security shall be subject to the terms and conditions of the contracting Agency.

(10) Public Buildings, Special Requirements.

a. Pre-bid Meeting Requirement.

In the case of any public works contract for the construction, reconstruction, alteration or repair of any public building (not a road, street or highway) the Agency shall call a meeting of all prospective bidders upon reasonable notice and at a place and time stated in the notice. The meeting shall be at least 15 days before the date for the submission of bids.

At the meeting, all the participants including the Agency, shall attempt to agree upon a listing of all subcontractor categories to be included in the bids for performing the work as required by (10)b. of this Section, and any such agreed listing shall be final and binding upon all bidders and upon the Agency. If all of the participants do not agree on such a listing at the

meeting, then the Agency itself, at least 10 days before the due date for the submission of bids, shall determine the subcontractor categories to be included in the listing. The listing, whether agreed to by all of the participants at the meeting or determined by the Agency itself in the absence of the unanimous agreement of the participants at the meeting, shall be published by the Agency at least 10 days before the due date for the submission of bids by mailing and listing to all of the participants at the meeting. The listing as so published shall be final and binding upon all bidders and the Agency and it shall be filled out completely in full without any abbreviations. If the agency required prequalification of subcontractors pursuant to this section in its invitation to bid, no contractor shall list a subcontractor in its subcontractor listing required by this subsection who has not already been prequalified by the agency.

b. Subcontracting Requirements.

All contracts for the construction, reconstruction, alteration or repair of any public building (not a road, street or highway) shall be subject to the following provisions:

i. Such contract shall be awarded only to a bidder whose bid is accompanied by a statement containing, for each subcontractor category set forth in the listing as provided in (10)a. of this Section, the name and address (city or town and State only -- street number and P.O. Box addresses not required) of the subcontractor whose services the bidder intends to use in performing the work and providing the material for such subcontractor category.

ii. The contracting Agency shall neither accept any bid nor award any contract to any bidder, which as the prime contractor, has listed itself as the subcontractor for any subcontractor category on the listing as provided in (10)a. of this Section, unless:

(i.) It has been established to the satisfaction of the awarding Agency that the bidder has customarily performed the specialty work of such subcontractor category by artisans regularly employed by the bidder's firm;

(ii.) That the bidder is duly licensed by the State to engage in such specialty work, if the State requires such licenses; and

(iii.) That the bidder is recognized in the industry as a bona fide subcontractor or contractor in such specialty work and subcontractor category

The typical subcontractor categories involving specialty work includes by way of illustration and not limited to, plumbing, electrical wiring, heating, roofing, insulating, weather stripping, masonry, bricklaying and plastering. The decision of the awarding Agency as to whether a bidder who lists itself as the subcontractor for a subcontractor category set forth in the listing as provided in (10)a. of this Section shall be final and binding upon all bidders, and no action of any nature shall lie against any awarding Agency or its employees or officers because of its decision in this regard.

iii. After such a contract has been awarded, the successful bidder shall not substitute another subcontractor for any subcontractor whose name was set forth in the Statement which accompanied his bid without the written consent of the awarding Agency. No Agency shall consent to any substitution of subcontractors unless the Agency is satisfied that the subcontractor whose name is on the bidders accompanying statement:

(i.) Is unqualified to perform the work required;

(ii.) Has failed to execute a timely reasonable subcontract;

(iii.) Has defaulted in the performance on the portion of the work covered by the subcontract; or

(iv.) Is no longer engaged in such business.

(iv.) All such contracts shall contain a provision for a penalty against the successful bidder for its failure to utilize any or all the subcontractors in the successful bidder's accompanying statement in the performance of the work on the public building

contemplated by the contract. The penalty amount shall be set by the Agency. The Agency will also determine if the amount is to be deducted from payments to the bidder for contract performance or if the amount is to be paid directly to the Agency by the bidder. Any penalty amount assessed against the contractor may be remitted or refunded, in whole or in part, by the Agency awarding the contract only if it is established to the satisfaction of the Agency that the subcontractor in question has defaulted or is no longer engaged in such business. No claim for the remission or refund of any penalty shall be granted under this Section unless an application is filed within one year after the liability of the successful bidder accrues. All penalty amounts assessed and not refunded or remitted to the contractor shall be reverted to the State, municipality or other Agency as the case may be.

v. If awarded not to a general contractor but to a prime contractor which contracts directly with Agency awarding and/or administering the contract, such contract may include a provision in its contract specifications that the successful bidder perform a fixed percentage of the work of said public works contract up to 50% of the total contract bid. Factors to be considered by the Agency awarding the contract in setting the required percentage of amount of work the successful bidder must perform may include the degree of difficulty involved in the Agency's administration of the work covered under the terms of the public works contract; the degree of specialty work contemplated in the contract including, but not limited to, the amount of plumbing, electrical wiring, heating, roofing, insulation, weather-stripping, masonry, bricklaying or plastering work under the contract; and the time period required in which to complete the public works project. The terms of the contract shall so specify reasons for the stated percentage in its general terms and conditions. The decision of the Agency setting the required percentage shall not be set aside by any court of competent jurisdiction as long as there is a rational basis for setting the required fixed percentage to be performed by the contractor. If the successful bidder fails to perform pursuant to the terms of this provision, the Agency awarding and/or administering the contract may invoke the provisions of § 6964 of this Title.

vi. No construction manager contract for public school projects may be signed unless approved by the Secretary.

(11) Other Contracting requirements.

a. Asbestos Abatement.

The selection of any contractor to perform asbestos abatement for State-funded projects shall be approved by the Department of Administrative Services pursuant to Chapter 78, Title 16 of the Delaware Code.

b. Standards of Construction; Protection of Physically Handicapped

All contracts shall conform with the standards established by the Delaware Architectural Accessibility Board as authorized by Chapter 73, Title 29 of the Delaware Code unless otherwise exempted by the Board.

(12) Public Bid Opening Requirements.

a. Bids shall be opened publicly and the contractor and total bid price or the contractor, base bid, and alternate price should be read aloud at the time and place designated in the plans and specifications.

b. Bids shall be unconditionally accepted without alteration. After the bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interests of the State or fair competition shall be permitted.

(13) Bid Evaluation, Contract Award and Execution Procedure.

a. The contracting Agency shall award any public works contract within 30 days of the bid opening to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the contract plans and specifications. Any public school district and its board shall award public works contracts in accordance with this paragraph's requirements except it shall award the contract within 60 days of the bid opening

b. A contract may be awarded to a bidder other than the lowest responsible and responsive bidder if, in the opinion of the contracting Agency, the interest of the Agency shall be better served by awarding the contract to another bidder. Such award shall be made only if the contracting Agency makes a written determination of the of the award describing the reason(s) why such award better serves the interest of the Agency. Reason(s) for making such award may include but are not limited to unsatisfactory performance on any previously awarded contract by the bidder being rejected.

c. The successful bidder shall execute a formal contract within 20 days after the award of the contract. The contract shall be in a form, with terms and conditions approved by the contracting Agency. The successful bidder shall also provide a bond as required in § 6962(d)(8) of this Subchapter within 20 days after the award of the contract.

d. If the successful bidder refuses or neglects to execute a formal contract and bond as required in this Subchapter, the bidder's bid bond or security deposit shall be taken and become the absolute property of the Agency for the benefit of the Agency as liquidated damages, and not as a forfeiture or as a penalty. Such monies shall be deposited with the Secretary of Finance or the Chief Financial Officer of the Agency if the Agency is not a State Agency.

e. If 2 or more responsible and responsive bidders shall bid an equal amount and such amount shall be the lowest bid, the contracting Agency may award the contract to any 1 of them or may reject all bids.

f. A contracting Agency may reject all bids on any contract prior to the award of the contract for any reason it believes to be in the best interest of the Agency.

#### § 6963. Emergency Procedures and Contract Change Orders.

(a) All of the provisions of this Subchapter may be waived pursuant to § 6907 of this Act.

(b) The awarding Agency may issue a change order to the public works contract setting forth any change, addition or extra work required to be undertaken by the contractor. Such changes may be necessitated by changed situations, unforeseen conditions, strikes and acts of God. Change orders shall be issued for all changes or extra work determined to be necessary and requested by the Agency, but not specified in the contract or its plans and specifications. The change order shall not:

(1) Be subject to the competitive bidding requirements of this Subchapter; or

(2) Invalidate the contract, provided that such change is within the scope of the contract as set forth in the standard specifications, special provisions or similar publication of the Agency.

#### § 6964. Contract Performance.

If any firm entering into a public works contract neglects or refuses to perform or fails to comply with its terms, the Agency may terminate the contract and proceed to award a new contract in accordance with this Subchapter or may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond.

#### § 6965. Sole Source Procurement.

(a) A contract may be awarded for a Public Works project without competition if the Agency Head, prior to the procurement, determines in writing that there is only one source for the required Public Works project. Sole source procurement shall not be used unless there is sufficient evidence that there is only one source for the required Public Works project and that no other type of Public Works project will satisfy the requirements of the Agency. The Agency shall examine cost or pricing data prior to an award under this Section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the Agency on the basis for the sole source procurement shall be included in the contract file.

(b) An Agency seeking a sole source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made

to determine the availability of any other source and an explanation of the procurement need. The Agency may, for confirmation, submit this documentation to the Division for review and comment prior to the intended date of award.

(c) The Agency shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the Agency. The Agency shall enter into a formal contract stating the terms and conditions of the procurement.

#### **§ 6966. Multiple Source Contracting.**

An Agency may award a contract for a particular public works project to 2 or more firms if the Agency Head makes a determination that such an award is in the best interests of the State. If such a determination is made, the advertisement shall include a notification of the right of the Agency to make such an award and the criteria upon which such an award will be based.

### **Subchapter V. Professional Services.**

#### **§ 6980. Small Professional Services Procurement Process.**

Any State contract for which an Agency is a party with probable fees, including reimbursable expenses and amendments, less than the threshold amount(s) established by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this Act for the completed job will be subject to the provisions of § 6983(c) and § 6985, but shall be excluded from all other portions of this Subchapter. Agencies may alternately, at their discretion, procure services which include materiel other than professional services in accordance with § 6924 of this Act.

#### **§ 6981. Large Professional Service Procurement Process.**

Any State contract for which an Agency is a party with probable fees, including reimbursable expenses and amendments, greater than the threshold amount(s) established by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this Act for the completed job will be subject to the provisions of this Subchapter. Agencies may alternately, at their discretion, procure services which include materiel other than professional services in accordance with § 6924 of this Act.

(a) Each Agency shall publicly announce, not less than once a week for 2 consecutive weeks in a newspaper published or circulated in each County of the State, when professional services are required except:

(1) In case of critical needs so certified pursuant to § 6907 of this Title; or

(2) Where professional services are determined by the Agency to be necessary during the course of completion of a previously awarded contract; and

a. The Agency determines that it would be in the best interest of the State to procure such additional or supplemental professional services from a firm already under contract for which the supplemental and additional professional services are required; and

b. Such additional or supplemental professional services are within the scope of the contract.

(b) Such announcement shall include:

(1) The project identification;

(2) General description and scope of the project;

(3) Location;

(4) Deadline for submission of brief letters of interest;

(5) Criteria for selection of professionals including any special criteria required for any particular project;

- (6) Indication of how interested professionals can apply for consideration;
- (7) The Agency's intention to award to more than one firm, if applicable; and
- (8) A description of the selection process to be used, as defined in Section 6982 of this Title.

(c) Additional advertising shall be at the discretion of the Agency.

(d) Each Agency shall establish written administrative procedures for the evaluation of applicants. These administrative procedures shall be adopted and made available to the public by each Agency before publicly announcing an occasion when professional services are required. One or more of the following criteria may be utilized in ranking the applicants under consideration:

- (1) Experience and reputation;
- (2) Expertise (for the particular project under consideration);
- (3) Capacity to meet requirements (size, financial condition, etc.);
- (4) Location (geographical);
- (5) Demonstrated ability;
- (6) Familiarity with public work and its requirements; or
- (7) Distribution of work to individuals and firms or economic considerations.

(e) In addition to the above, other criteria necessary for a quality, cost-effective project may be utilized.

(f) Each project shall be given individual attention, and a weighted average may be applied to criteria according to its importance to each project.

(g) For the selection process described in Section 6982(b) of this Title, price may be a criteria used to rank applicants under consideration.

#### § 6982. Selection.

(a) Agencies shall use the selection process described in paragraphs (1) through (5) in this subsection (a) for those professional services within the scope of the practice of architecture, professional engineering, including but not limited to environmental engineering, consulting and environmental monitoring, professional land surveying, construction management, landscape architecture and geology as defined and authorized by the laws of the State or those services performed by persons engaged in the above-mentioned professions in connection with their professional employment or practice.

(1) Based upon the criteria established pursuant to § 6981(d) of this Title, the Agency shall rank in order of preference the applicants deemed to be qualified to perform the required services.

(2) Beginning with the qualified firm designated first on the preference list, the Agency shall negotiate for professional services at compensation which the Agency determines is fair and reasonable. The Agency shall conduct an analysis of the cost of the professional services required, in addition to considering their scope and complexity. Fee proposals shall not be solicited from this or any other firm on the preference list for use in comparison of fee negotiations. The Agency may require the firm receiving the award to execute a truth-in-negotiation certificate stating the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. All professional service contracts shall provide that the original contract price and any additions thereto shall be adjusted to exclude any significant sums where the Agency determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

(3) Should the Agency be unable to negotiate a satisfactory contract with the qualified firm designated to be first on the preference list, at a price the Agency determines to be fair and reasonable, negotiations with that firm shall be formally terminated. The Agency may negotiate with the remaining firms by order of ranking. At any point in the negotiations process the Agency may, at its discretion, terminate negotiations with any or all firms.

(4) After accomplishing the evaluation and conducting discussions and negotiations, the Agency shall select 1 applicant and prepare a public notice within 10 days after awarding the contract stating the firm selected. This notice will appear in a Statewide news publication or by letter to all applicants. If the Agency has elected to select multiple firms, the Agency shall continue the selection process by negotiating with the next firm on the preference list. This process shall be continued until the required number of vendors have been selected.

(5) It shall be the responsibility of the Professional Services firm to be current with any professional registration or certification as required by law.

(b) For all professional services not described in Subsection (a) herein, Agencies shall use the selection process described in paragraphs (1) - (5) in this Subsection (b).

(1) Based upon the criteria established pursuant to 6981(d) of this Title, the Agency shall determine all applicants that meet the minimum qualifications to perform the required services.

(2) The Agency shall then interview at least one of the qualified firms. The Agency may negotiate with one firm without terminating negotiations with another firm and may negotiate with one or more firms during the same period. At any point in the negotiation process, the Agency may, at its discretion, terminate negotiations with any or all firms.

(3) The Agency may require the firm with whom the Agency is negotiating to execute a truth-in-negotiation certificate stating the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. All professional service contracts shall provide that the original contract price and any additions thereto shall be adjusted to exclude significant sums where the Agency determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

#### **§ 6983. State Assistance to Local Governmental Units.**

The Department of Administrative Services shall provide assistance in selecting professional services firms and negotiating professional service contracts upon the request by an Agency, municipality, or political subdivision. The Department shall be reimbursed by the municipality or political subdivision for all costs involved.

#### **§ 6984. Administrative Provisions.**

In the case of any contract entered into by an Agency other than any county of this State and other than a public school district, and which is not excluded under §§ 6980 and/or 6981 of this Subchapter, no contract shall be executed unless and until the firm has provided the Agency with its taxpayer identification number (i.e., federal employer identification number or social security number) or its Delaware business license number and, within fifteen (15) days of the time identification of any subcontractor shall be required or at the time the contract is executed, whichever is later, the number of such subcontractor. The Agency shall report to the Division of Revenue each firm and subcontractor selected for an award within fifteen (15) days of identification of such firm or subcontractor under this Subsection unless the Director of the Division of Revenue notifies the Agency of criteria according to which, in the Director's discretion, reporting is not required, and the contract meets such criteria.

#### **§ 6985. Sole Source Procurement.**

(a) A contract may be awarded for Professional Service without competition if the Agency Head, prior to the procurement, determines in writing that there is only one source for the required professional service. Sole source procurement shall not be used unless there is sufficient evidence

that there is only one source for the required professional service and that no other type of professional service will satisfy the requirements of the Agency. The Agency shall examine cost or pricing data prior to an award under this Section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the Agency on the basis for the sole source procurement shall be included in the contract file.

(b) An Agency seeking a sole source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made to determine the availability of any other source and an explanation of the procurement need. The Agency may, for confirmation, submit this documentation to the Division for review and comment prior to the intended date of award.

(c) The Agency shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the Agency. The Agency shall enter into a formal contract stating the terms and conditions of the procurement.

**§ 6986. Multiple Source Contracting.**

An Agency may award a contract for a particular professional service to 2 or more firms if the Agency Head makes a determination that such an award is in the best interests of the State. If such a determination is made, the advertisement shall include a notification of the right of the Agency to make such an award and the criteria upon which such an award will be based."

Section 10. Amend § 8806(b), (c), (d), and (e), Title 29 of the Delaware Code by deleting said subsections in their entirety.

Section 11. Amend § 6352(a)(6), Title 29 of the Delaware Code, by deleting the words "approval or disapproval" and substituting in lieu thereof the word "review", and by deleting § 6352(b), Title 29 of the Delaware Code, in its entirety.

Section 12. Any dollar amounts established under previous Title 29, Chapter 69 or Chapter 88 of the Delaware Code shall remain in effect until the Purchasing Advisory Council sustains or changes such dollar amounts as provided for under the provisions of this bill.

Section 13. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Section 14. This Act shall be effective as of September 16, 1996.

Approved August 7, 1996

## CHAPTER 602

## FORMERLY

SENATE BILL NO. 115  
AS AMENDED BY HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO THE APPLICABILITY OF THE DELAWARE RESPONSIBLE ALCOHOLIC BEVERAGE SERVER TRAINING PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1203(c), Title 4 of the Delaware Code by striking said subsection in its entirety and by substituting in lieu thereof a new §1203(c) to read as follows:

"(c) Effective January 1, 1997, every person who holds any valid license issued by Alcoholic Beverage Control Commission pursuant to this title which authorizes the sale of alcoholic beverages for off-premises consumption shall, upon request, be required to demonstrate that any employees who, as part of their employment responsibilities, sell, serve or otherwise deliver alcoholic beverages directly to patrons of the licensed establishment for off-premises consumption, or who manage employees who do, have successfully completed a responsible alcoholic beverage server training program recognized and approved by the Commission in accordance with the provisions of this chapter. Each licensee who participates directly in the management of the licensed establishment shall also be required to successfully complete a responsible alcoholic beverage server training program recognized and approved by the Commission."

Section 2. Amend §1203(d), Title 4 of the Delaware Code by striking said subsection in its entirety and substituting in lieu thereof a new §1203(d) to read as follows:

"(d) Following January 1, 1997, every person who makes application for any license or renewal of any valid license issued by the Alcoholic Beverage Control Commission pursuant to this title, which authorizes the sale of alcoholic beverages for off-premises consumption shall, as part of the application process, certify to the Commission that any employees who, as part of their employment responsibilities, sell, serve or otherwise deliver alcoholic beverages directly to patrons of the license establishment for off-premises consumption, or who manage employees who do, have successfully completed a responsible alcoholic beverage server training program recognized and approved by the Commission in accordance with the provisions of this chapter. Each applicant who intends to participate directly in the management of the licensed establishment shall also be required to complete a responsible alcoholic beverage server training program recognized and approved by the Commission."

Section 3. Amend §1203, Title 4 of the Delaware Code by adding a new subsection (e) to read as follows:

"(e) The provisions of subsections (a) through (d) of this section shall not apply to licenses issued pursuant to §§514 and 525 of this title."

Section 4. Amend § 1202, Chapter 12, Title 4 of the Delaware Code by adding a new subsection (c) to read as follows:

"(c) For the purposes of § 1203 (a) and (e) of this title, the term 'employees' means persons who have been employed by the holder of a license for at least thirty (30) days and who work in a licensed establishment at least ten (10) hours a week."

Section 5. Amend § 1202, Chapter 12, Title 4 of the Delaware Code by adding a new subsection (d) to read as follows:

"(d) The Commission may grant new licenses or renew valid licenses conditional upon the certification required § 1203 (b) and (d) of this title being made to the Commission within thirty (30) days of the granting or renewal of such license."

Section 6. Amend § 1201(5), Chapter 12, Title 4 of the Delaware Code by deleting the words "for on-premises consumption" therefrom.

Approved August 7, 1996

## CHAPTER 603

## FORMERLY

SENATE BILL NO. 70  
 AS AMENDED BY SENATE AMENDMENT NO. 1 AND  
 HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 29, TITLE 24, DELAWARE CODE RELATING TO REAL  
 ESTATE BROKERS, SALESPERSONS AND APPRAISERS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
 DELAWARE:

Section 1. Amend subsection (a), §2902, Chapter 29, Title 24, Delaware Code by striking said subsection in its entirety and substituting the following in lieu thereof:

“(a) The Delaware Real Estate Commission shall consist of 9 members appointed by the Governor: 5 professional members, 4 of whom shall be licensed real estate brokers, and 1 salesperson; and 4 public members. All members shall have been residents of the State of Delaware for 5 years immediately prior to such appointment.

(1) Four of the professional members shall be brokers: one shall be a resident of New Castle County; one shall be a resident of Kent County; one shall be a resident of Sussex County; and one shall maintain an office in the City of Wilmington. Broker members of the Commission shall have been active brokers or salespersons for 5 years immediately prior to their appointment.

(2) One of the professional members shall be a salesperson. The salesperson member shall have been an active salesperson for 4 years immediately prior to his/her appointment.

(3) Of the 4 public members, at least one public member shall be from each county. To serve on the Commission, a public member shall not be, nor have been within the last eight (8) years of the effective date of appointment, a real estate salesperson or broker, nor a member of the immediate family of a salesperson or broker; shall not be, nor have been with the last eight (8) years of the effective date of appointment, employed by a real estate broker; shall not have had a financial interest in the providing of goods and services to a real estate broker or salesperson; and shall not be, nor have been within the last eight (8) years of the effective date of appointment, engaged in an activity directly related to the real estate profession. Such public member shall be accessible to inquiries, comments and suggestions from the general public.”

Section 2. Amend subsection (b), §2902, Chapter 29, Title 24, Delaware Code by striking said subsection in its entirety and substituting the following in lieu thereof:

“(b) Each member shall serve for a term of 3 years, unless otherwise specified in this Chapter; and may succeed him/herself for one additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may succeed him/herself for only 1 additional full term. Any person appointed to fill a vacancy on the Commission shall hold office for the remainder of the unexpired term of the former member.”

Section 3. Amend subsection (c), §2902, Chapter 29, Title 24, Delaware Code by striking said subsection in its entirety and substituting the following in lieu thereof:

“(c) No member of the Real Estate Commission, while serving on the Commission, shall be a president, president-elect, vice-president, secretary, treasurer, or other elected official of a professional association of real estate brokers or salespersons.”

Section 4. Amend subsection (d), §2902, Chapter 29, Title 24, Delaware Code by striking said subsection in its entirety and substituting the following in lieu thereof:

"(d) No current Commissioner shall be subject to the provisions of §2902(a)(1) and (3), of this Title, unless and until the time of such Commissioner's reappointment to the Delaware Real Estate Commission."

Section 5. Amend subsection (e), §2902, Chapter 29, Title 24, Delaware Code by striking the words "subsection (d)" where they occur in said subsection (e) and substituting the words "subsection (b)" in lieu thereof.

Section 6. Amend subsection (f), §2902, Chapter 29, Title 24, Delaware Code by striking said subsection in its entirety and substituting the following in lieu thereof:

"(f) The provisions set forth for 'employees' in Chapter 58 of Title 29 shall apply to all members of the Commission, and to all agents appointed, or otherwise employed, by the Commission."

Section 7. Amend §2903, Chapter 29, Title 24, Delaware Code by striking said Section in its entirety and substituting the following in lieu thereof:

"§2903. Election of officers; quorum; special meetings.

(a) In the same month of each year the members shall elect, from among their number, a Chairperson, Vice-Chairperson and Secretary. Each officer shall serve for 1 year, and shall not succeed him/herself in the same office.

(b) The Commission shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such other times as the Chair deems necessary; or at the request of a majority of Commission members. Special or emergency meetings may be held without notice provided a quorum is present.

(c) A majority of members shall constitute a quorum; and no disciplinary action shall be taken without the affirmative vote of at least 5 members. Any member who fails to attend 3 consecutive unexcused meetings, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed.

(d) Minutes of all meetings shall be recorded, and copies shall be maintained by the Division of Professional Regulation. At any hearing where evidence is presented, such hearing shall be recorded and transcribed by the Division. Each party in such a hearing shall be entitled, upon request, to obtain a copy of such transcript at his or her own expense.

(e) The Commission may adopt a seal and may use that seal on all official documents."

Section 8. Amend §2907, Chapter 29, Title 24, Delaware Code by striking said Section in its entirety and substituting the following in lieu thereof:

"§2907. Qualifications for certificate; application; examination.

(a) An applicant who is applying for a certificate of registration under this Chapter shall have the following qualifications:

(1) The applicant shall be competent to transact the business of a real estate broker or real estate salesperson in such manner as to safeguard the interests of the public;

(2) The applicant shall provide such information as may be required on an application form designed and furnished by the Board with the approval of the

Division of Professional Regulation. No application form shall require a picture of the applicant; require information relating to citizenship, place of birth, length of state residency; nor require personal references;

(3) The applicant shall be required to pass a uniform national and state examination as is contractually arranged for, with a nationally recognized independent testing service, by the Director of the Division of Regulation.

(4) The applicant shall not have been convicted of a felony, nor have been professionally penalized, nor convicted for drug addiction, nor have been professionally penalized or convicted for fraud.

(b) Where the Commission has found to its satisfaction that an applicant has been intentionally fraudulent, or that false information has been intentionally supplied, it shall report its findings to the Attorney General for further action.

(c) Where the application of a person has been refused or rejected and such applicant feels that the Commission has acted without justification; has imposed higher or different standards for him/her than for other applicants or registrants; or, has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(d) Every application for a certificate under this Chapter shall be accompanied by the fee prescribed by §2908 of this Title."

Section 9. Amend Subsection (b), § 2911, Chapter 29, Title 24, Delaware Code by striking the words "15 continuing education hours approved by the Commission" and substituting "continuing education hours in an amount to be prescribed by the rules and regulations of the Commission" in lieu thereof; and by striking the sentence "The requirement shall take effect with the 1984 application for renewal, except that the Commission shall require evidence of only 8 hours of continuing education for the purpose of the 1984 application for renewal" in its entirety.

Section 10. Amend §2920, Chapter 29, Title 24, Delaware Code by adding to said Section the following:

"Notwithstanding the foregoing provisions, the Real Estate Commission shall permit a real estate salesperson, who possesses a valid certificate of registration in this state, to put his/her certificate of registration on an inactive list for an unlimited amount of time. The real estate salesperson may reactivate his/her certificate of registration, subject to payment of the biennial registration fees, for such time as the certificate has been inactive, upon submission of proof of fulfillment of continuing education requirements for each renewal period."

Section 11. Amend subsection (a), §2921, Chapter 29, Title 24, Delaware Code by striking the sum "\$10,000" as the same appears in said subsection and substituting the sum "\$25,000" in lieu thereof.

Section 12. Amend §2921, Chapter 29, Title 24, Delaware Code by redesignating present subsection (b) as new subsection (c), and redesignating each succeeding subsection accordingly.

Section 13. Amend §2921, Chapter 29, Title 24, Delaware Code by adding a new subsection (b), which new subsection shall read as follows:

"(b) The Real Estate Commission shall inform the aggrieved person, immediately upon receipt of a written complaint, either sent to the Commission or the Division of Professional Regulation, that a Real Estate Guaranty Fund is available, and the steps necessary to comply with the provisions of this Section to recover compensation for any of the foregoing acts of a real estate salesperson or real estate broker."

Section 14. The Commission shall consist of the members presently serving unexpired terms on the Commission as it existed prior to the enactment date of this Act. Upon the expiration of the terms of office of those presently serving, the Governor shall appoint new members until such time as the Commission is composed of members meeting the requirements of this Act.

Approved August 7, 1996

## CHAPTER 604

## FORMERLY

HOUSE JOINT RESOLUTION NO. 4  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 2

CREATING A TASK FORCE ON PRISON FACILITIES TO EVALUATE THE FEASIBILITY OF BUILDING A NEW MAXIMUM SECURITY PRISON, AND TO IDENTIFY A SITE OR SITES UPON WHICH SUCH A PRISON MIGHT BE BUILT.

WHEREAS, the population in Delaware prisons on December 1, 1981, was 1,397; and

WHEREAS, the population in Delaware prisons as of December 1, 1994, was 3,979; and

WHEREAS, the last prison built in Delaware was opened on December 28, 1991; and

WHEREAS, the continuing rise in the prison population is a national trend; and

WHEREAS, the rise in prison population creates administrative inefficiencies and security risks; and

WHEREAS, certain minimum standards for space and facilities are mandated by federal courts; and

WHEREAS, the need for additional prison facilities must be fully evaluated.

NOW, THEREFORE:

BE IT RESOLVED by the House of Representatives of the 138th General Assembly of the State of Delaware, the Senate concurring therein, that a Task Force on Prison Facilities is hereby created. Said Task Force shall evaluate the feasibility of building a new maximum security prison and shall attempt to identify a site or sites upon which such a prison might be built.

BE IT FURTHER RESOLVED that the Task Force on Prison Facilities shall consist of the following members:

1. The Chairs of the House of Representatives Corrections Committee and Senate Adult and Juvenile Corrections Committees, who shall be the Co-chairs of the Task Force.
2. The Commissioner of Corrections.
3. The Governor's Counsel.
4. The Comptroller General.
5. The Attorney General.
6. A member of the Delaware State Police, appointed by the Superintendent.
8. A member of the New Castle County Police Force, to be appointed by the Chief of the New Castle County Police Force.
9. Two persons to be appointed by the Speaker of the Delaware House of Representatives.
10. Two persons to be appointed by the President Pro Tem of the Delaware Senate.
11. A member of the Wilmington Police Force, to be appointed by the Chief of the Wilmington Police Force.
12. The Secretary of Public Safety of the State of Delaware.

13. The President of the Delaware Correctional Officer's Association.

14. One member from each of the minority caucuses of the House and Senate, to be appointed by the Speaker of the Delaware House of Representatives and the President Pro Tem of the Delaware Senate, respectively.

BE IT FURTHER RESOLVED that Legislative Council shall furnish any necessary clerical and support staff to the Task Force.

BE IT FURTHER RESOLVED that this Task Force shall report its findings and conclusions to the Governor and the General Assembly by June 1, 1995.

Approved April 3, 1995

## CHAPTER 605

## FORMERLY

HOUSE JOINT RESOLUTION NO. 9  
AS AMENDED BY HOUSE AMENDMENT NO. 1 AND  
SENATE AMENDMENT NO. 1URGING THE ESTABLISHMENT OF A STATE ATHLETIC COMMISSION, AND  
PROVIDING FOR AN ATHLETIC COMMISSION STUDY COMMITTEE.

WHEREAS, in recent years, interest and participation in professional, semi-professional and amateur sporting teams and events has grown dramatically within this State, and there seems to be a genuine interest in re-establishing an Athletic Commission as a regulatory and economic development agency; and

WHEREAS, other States (such as Nevada, New York and New Jersey) have very active athletic commissions: including detailed licensing regulations which not only ensure the health and safety of athletes, but also the integrity and solvency of persons who are involved financially in athletics; and

WHEREAS, a re-established State Athletic Commission would:

(a) be an economic development asset, because it would attract new sporting activities to the State;

(b) improve Delaware's involvement with major professional sports teams in Philadelphia, Baltimore and other near-by areas, and encourage these teams to play exhibition games and conduct public appearances within this State;

(c) enhance communication among sports professionals throughout the State;  
and

(d) be a central repository for each sport's regulations, contracts, legal rulings and requirements.

## NOW THEREFORE:

BE IT RESOLVED, by the House of Representatives and by the Senate, with the approval of the Governor, that the Athletic Commission Study Committee is hereby established.

BE IT FURTHER RESOLVED, that the Committee shall be composed of five members of the House of Representatives ( three members of the majority party, and two members of the minority party) appointed by the Speaker; and five members of the Senate ( three members of the majority party, and two members of the minority party) appointed by the President *pro tempore*. The Committee shall elect its Chairperson from among its members.

BE IT FURTHER RESOLVED, that the Committee shall investigate and report to the General Assembly on the following subjects:

- (a) the feasibility and desirability of re-establishing a State Athletic Commission.
- (b) the organization, membership and staffing of any proposed athletic commission;
- (c) the jurisdiction, functions and responsibilities of any proposed athletic commission; listing those specific sports and activities which would come under its authority;
- (d) a proposed budget of any proposed athletic commission, including specific amounts proposed for specific budget items; and

- (e) any economic impact of sports regulation upon the State, upon participants (including team owners), and upon the public (including spectators).

BE IT FURTHER RESOLVED, that in its deliberations, the Committee shall hear testimony from persons who are active in the administration and coaching of every professional and amateur sport which conducts regularly-scheduled games, matches or meets in this State.

BE IT FURTHER RESOLVED, that the Committee shall have authority to call such witnesses as it deems necessary, including athletes, technical witnesses and financial witnesses.

BE IT FURTHER RESOLVED, that the Committee shall make its interim report to the General Assembly on or before January 15, 1997, and shall make its final report to the General Assembly on or before May 15, 1997.

Approved June 24, 1996

## CHAPTER 606

## FORMERLY

## HOUSE CONCURRENT RESOLUTION NO. 1

**REINSTATING THE BOOT CAMP STUDY COMMITTEE WITH THE REQUEST THAT THE COMMITTEE REVIEW THE BOOT CAMP INTENSIVE INCARCERATION ACT, AND THE PROGRESS AND STATUS OF THE IMPLEMENTATION OF THAT ACT.**

WHEREAS, in January 1995 the 138th General Assembly established the Boot Camp Study Committee to study the feasibility of a boot camp incarceration program in this State; and

WHEREAS, in July 1995 the Governor signed the Boot Camp Intensive Incarceration Act, and construction of the boot camp facilities began in 1996; and

WHEREAS, the Boot Camp Intensive Incarceration Act was the product of close cooperation between representatives from a wide variety of criminal justice agencies, interests and viewpoints which sometimes differed greatly in philosophy and priorities; and

WHEREAS, many states, upon implementation of a state's first boot camp program, conduct a review of that program in order to determine the program's strengths and weaknesses and to make appropriate improvements. From time to time during the deliberations of the Boot Camp Study Committee it was suggested that Delaware follow this example; and

WHEREAS, it already appears that the "fine tuning" of one or more provisions of the Act would greatly improve the effectiveness of the program. One area which the Committee would review is the procedure for determining which persons are "boot camp eligible;" and

WHEREAS, the General Assembly has determined that it is important that the status and progress of the implementation of the Boot Camp Intensive Incarceration Act, as well as the legislation establishing the boot camp program, be reviewed by the Boot Camp Study Committee.

NOW, THEREFORE:

BE IT RESOLVED by the House of Representatives of the 139th General Assembly, the Senate concurring therein, that the Boot Camp Study Committee, as established by House Concurrent Resolution No. 2 of the 138th General Assembly, is hereby reinstated.

BE IT FURTHER RESOLVED that the duties and responsibilities of the Boot Camp Study Committee shall include, but not be limited to, a review and evaluation of the following issues and subjects:

(a) a review of the various stages involved in the implementation of the Boot Camp Intensive Incarceration Act since its enactment;

(b) an evaluation of the progress made and problems encountered in implementing the Act;

(c) a review of considerations relating to the physical site, structures and facilities;

(d) a comparison of Delaware's program with other similar State and federal programs.  
and

(e) specific reviews of:

(1) conditions, requirements and procedures for admission to the program;

(2) discipline and removal from the program; and

(3) aftercare suggestions and recommendations.

## CHAPTER 607

## FORMERLY

## HOUSE CONCURRENT RESOLUTION NO. 2

**URGING THE APPOINTMENT OF A COMMITTEE TO INVESTIGATE WHETHER OR NOT DELAWARE COULD BENEFIT FROM THE ESTABLISHMENT OF A "BOOT CAMP" PRISON ALTERNATIVE; AND IF SO, UNDER WHAT CIRCUMSTANCES WOULD A "BOOT CAMP" ALTERNATIVE BE FEASIBLE.**

WHEREAS, a "boot camp," in corrections terms, is the use of a military regimen for certain specialized groups, and is most often used for young offenders or first-time offenders; and

WHEREAS, many States have implemented the boot camp concept under a wide variety of circumstances; and

WHEREAS, in recent years, because of successes in other States, there has been a renewed interest in Delaware in the possible feasibility of boot camps for specific purposes in this State.

NOW, THEREFORE:

BE IT RESOLVED, by the House of Representatives of the 138th General Assembly, the Senate concurring herein, that the Boot Camp Study Committee is hereby established.

BE IT FURTHER RESOLVED that the Boot Camp Study Committee shall consist of the House Corrections Committee; a senator appointed by the President *pro tempore* of the Senate and a senator appointed by the Senate minority leader; the Attorney General or his representative; the Bureau Chief of the Bureau of Prisons or his representative; the Bureau Chief of the Bureau of Community Custody and Supervision; a representative from the Superior Court appointed by the President Judge; Chief of Engineering and Operations of the Division of Facilities Management; and a representative from the Office of the Governor. The Chairman of the House Corrections Committee shall chair the Boot Camp Study Committee. Six members shall constitute a quorum. Staff for the Committee shall be designated by the Chairman; and secretarial and typing assistance shall be provided by the House of Representatives.

BE IT FURTHER RESOLVED that the duties and responsibilities of the Boot Camp Study Committee shall include, but not be limited to, a study and evaluation of the following issues and subjects:

- (a) possible goals or objectives of a Delaware boot camp program;
- (b) general theme or philosophy of any program;
- (c) conditions and requirements for admission to the program;
- (d) dismissals from the program;
- (e) counselling;
- (f) what sites, if any, would be appropriate;
- (g) staffing;
- (h) alternative boot camp programs;
- (i) estimated costs of each alternative boot camp program; and

(j) federal financial assistance.

BE IT FURTHER RESOLVED that the Committee shall make its report to the House of Representatives on or before June 1, 1996.

## CHAPTER 608

## FORMERLY

## HOUSE CONCURRENT RESOLUTION NO. 28

ESTABLISHING A JOINT TASK FORCE TO REVIEW HOME BUILDER PRACTICES  
AND REGULATION IN DELAWARE.

WHEREAS, the largest and most significant purchase ever made by an individual or family is their home; and

WHEREAS, there are many very capable and trustworthy home builders in Delaware; and

WHEREAS, there are always a few in any occupation that are not capable or reputable and will take advantage of the consumer; and

WHEREAS, there have been a series of such disreputable home builders preying upon people of Delaware in recent months; and

WHEREAS, State, County, and Local Governments have failed to fully protect consumers from such disreputable builders;

## NOW, THEREFORE:

BE IT RESOLVED by the House of Representatives of the 138th General Assembly of the State of Delaware, the Senate concurring therein, that there is hereby created a Joint House and Senate Task Force to investigate State, County and Local regulations of home builders; to conduct such public hearings as it finds helpful; to review House Bill No. 351, House Bill No. 352 and House Bill No. 353; to review the other legislative options available to the State of Delaware; and to make recommendations to the General Assembly on the better way to regulate home builders and to protect purchasers of Delaware homes.

BE IT FURTHER RESOLVED that this Task Force shall make its recommendations to the General Assembly on or before January 15, 1996.

BE IT FURTHER RESOLVED that the Task Force shall consist of:

(a) the Chairperson of the House of Representatives Housing and Consumer Affairs Committee who shall be the Task Forces Chairperson;

(b) the Chairperson of the Senate Housing and Consumer Affairs Committee;

(c) one member of the House of Representatives appointed by the Speaker of the House;

(d) one member of the House of Representatives appointed by the Minority Leader of the House;

(e) one member of the Senate appointed by the President Pro Tempore of the Senate;

(f) one member of the Senate appointed by the Minority Leader of the Senate;

(g) one member of the Attorney General's Consumer Affairs Division;

(h) one member from the Home Builder's Association of Delaware;

(i) one member from the Delaware Association of Realtors;

(j) one member from the Delaware Bankers Association; and

(k) the President of the Delaware Bar Association or his designee.

## CHAPTER 609

## FORMERLY

## HOUSE CONCURRENT RESOLUTION NO. 29

CREATING A TRUANCY TASK FORCE TO STUDY THE CURRENT SYSTEM FOR DEALING WITH TRUANT CHILDREN AND TO RECOMMEND CHANGES TO IMPROVE THE STATE'S RESPONSE TO THE PROBLEM OF TRUANCY.

WHEREAS, the problem of school truancy among children is one that continues to grow;  
and

WHEREAS, it is important that all children receive the benefit of a good education in order to prepare themselves for the future; and

WHEREAS, the law at present provides that jurisdiction over those charged with failing to send a child between the ages of 5 and 16 to school lies in the Justice of the Peace court system; and

WHEREAS, the law presently in effect regarding the handling of school truancy may not be as comprehensive or appropriate as it could be;

NOW, THEREFORE:

BE IT RESOLVED by the House of Representatives and the Senate of the 138th General Assembly of the State of Delaware, with the approval of the Governor, that a Task Force on Truancy is hereby established, the membership of which shall consist of the following individuals or their designees:

1. The Chief Judge of the Family Court;
2. The Chief Magistrate of the Justice of the Peace Courts;
3. The Secretary of the Department for Services for Children, Youth and Their Families;
4. The Attorney General;
5. The Superintendent of the Department of Public Instruction;
6. The President of the Visiting Teachers Association;
7. The President of the Delaware Congress of Parents and Teachers, Inc.;
8. The Chairperson of the Education Committee of the House of Representatives.  
and
9. The Chairperson of the Education Committee of the Senate.

BE IT FURTHER RESOLVED that the Chairperson of the Education Committee of the House of Representatives, or that person's designee, shall serve as the Chairperson of the Task Force.

BE IT FURTHER RESOLVED that staff support for the Task Force shall be provided by the House of Representatives.

BE IT FURTHER RESOLVED that the Task Force shall meet as required to study and evaluate the current system for dealing with truancy and the weaknesses that may be present in that system; to consider methods utilized in other states and countries for possible use in Delaware; and to develop recommendations to be presented to the Governor, to the Speaker of the House, and to the President Pro Tempore of the Senate by March 1, 1996.

## CHAPTER 610

## FORMERLY

## HOUSE CONCURRENT RESOLUTION NO. 37

**URGING A REVIEW AND FULL ASSESSMENT OF CERTAIN PERSONNEL AND EMPLOYEE RELATIONS ISSUES.**

WHEREAS, many State officials have, over the years, declared that Delaware's state employees are among the State's most important assets; and

WHEREAS, approximately thirty years ago the State established the Merit System of Personnel Administration in an attempt to treat State employees fairly; to respond and correct legitimate complaints; and to create working conditions which enhance employee productivity, efficiency and loyalty; and

WHEREAS, in recent years there have been an increasing number of complaints concerning the personnel procedures of a number of State agencies, the inability of the system to handle complaints and appeals in a timely fashion, and an increasing sense of employee dissatisfaction with the Merit System in general.

## NOW THEREFORE:

BE IT RESOLVED by the House of Representatives of the 138th General Assembly of the State of Delaware, with the concurrence of the Senate, that the Legislative Committee on Personnel Practices is hereby established.

BE IT FURTHER RESOLVED that the Committee shall review and make recommendations on the following subjects relating to the personnel practices of the State and its agencies:

- (a) The goals and objectives of present personnel practices and procedures of the State, and of various State agencies;
- (b) The form and structure of present personnel practices and procedures of the State, and the various State agencies, including accountability;
- (c) Specific personnel issues which have been brought to the attention of members of the General Assembly;
- (d) Whether or not the present personnel system for handling complaints and appeals is functioning well; is in compliance with applicable regulations, and with State and Federal law. If not in compliance, to identify the problems and possible solutions which would make such system efficient and responsive, would eliminate unreasonable obstacles, and eliminate direct or indirect retaliation upon an employee for using it.
- (e) Any other personnel issues, practices, or procedures which might come before the Committee.

BE IT FURTHER RESOLVED that the Committee shall consist of thirteen members: four members of the House of Representatives appointed by the Speaker of the House; (two majority party members, and two minority party members); four members of the Senate appointed by the President *pro tempore* of the Senate (two majority party members, and two minority party members); the Attorney General, or an attorney employed within the State Department of Justice appointed to represent the Attorney General; and four public members, (no more than two of whom shall be members of a major political party); two such public members shall be appointed by the Speaker of the House, and two public members shall be appointed by the Minority Leader.

BE IT FURTHER RESOLVED that after the Committee has collected its information and has reached a consensus relating to those issues and problems the Committee determines to

be most important, the Committee, together with the Office of State Personnel and the Department of Labor shall take such action as the Committee deems appropriate.

BE IT FURTHER RESOLVED that the Committee shall issue a preliminary report not later than June 15, 1996 with a final report due no later than January 15, 1997.

## CHAPTER 611

## FORMERLY

SENATE JOINT RESOLUTION NO. 9  
AS AMENDED BY SENATE AMENDMENT NO. 1

CONTINUING THE FUTURES COMMISSION, KNOWN AS "COMMISSION ON DELAWARE COURTS 2000", OPERATING AS A TASK FORCE ON COURT STRUCTURE AND LONG RANGE PLANNING FOR THE COURT SYSTEM IN THE STATE OF DELAWARE.

WHEREAS, the 137th General Assembly enacted Senate Joint Resolution No. 14 creating the Commission on Delaware Courts 2000. The terms of said joint resolution are incorporated herein as if set forth in full; and

WHEREAS, the Commission on Delaware Courts 2000 issued an Interim Report on February 21, 1994; and

WHEREAS, the Commission on Delaware Courts 2000 issued a Final Report on May 16, 1994; and

WHEREAS, the interim and final reports on the Commission on Delaware Courts 2000 made numerous recommendations regarding Court structure and organization; needs of the judiciary; needs of the citizens of the state of Delaware; and the Courts' support systems including technology; and

WHEREAS, the 137th General Assembly enacted and the Governor signed numerous pieces of legislation implementing the recommendations of the Commission on Delaware Courts 2000 including the first leg of the constitutional amendment regarding the Court of Common Pleas and Family Court; changes in the civil jurisdiction of the Court of Common Pleas and the Justice of the Peace Courts; establishment of criminal jury trials in the Court of Common Pleas in New Castle County; establishment of Commissioners in Superior Court and Court of Common Pleas; revision to the jury system; transfer of all adoption records to the Family Court; transfer of appeal jurisdiction for matters heard in the Justice of the Peace Courts to the Court of Common Pleas; revision of civil procedures in Justice of the Peace Courts; revision of the Victims' Bill of Rights; and revisions to statutes relating to expungment of records in the Family Court; and

WHEREAS a number of the recommendations of the Commission on Delaware Courts 2000 have not yet been implemented; and

WHEREAS, there is a continuing need for the Commission consisting of members of the legislature, executive and judicial branches of the government, and the public to oversee implementation of the Commission's comprehensive study and recommendations.

NOW THEREFORE:

BE IT RESOLVED by the Senate and House of Representatives of the 138th General Assembly of the State of Delaware, with the approval of the Governor, that the Commission on Delaware Courts 2000 ("the Commission"), first created in Senate Joint Resolution No. 14 by the 137th General Assembly of the State of Delaware with the Governor concurring, shall continue to operate as previously provided during the duration of the 138th General Assembly.

BE IT FURTHER RESOLVED that the Commission shall remain in existence for the duration of the 138th General Assembly to implement the recommendations of the Commission, and to make such supplemental reports as the Commission deems appropriate.

Approved April 27, 1995

## CHAPTER 612

## FORMERLY

SENATE JOINT RESOLUTION NO. 17  
AS AMENDED BY SENATE AMENDMENT NO. 1 AND  
HOUSE AMENDMENT NO. 2

DIRECTING THE DEPARTMENT OF CORRECTION TO DEVELOP RULES AND REGULATIONS PROVIDING FOR ALTERNATIVE HOUSING TO ADDRESS PRISON OVERCROWDING PROBLEMS.

WHEREAS, the Delaware Department of Correction has experienced an influx of prisoners that has led to the spectre of prison overcrowding; and

WHEREAS, the State of Delaware has embarked on an ambitious prison expansion program that should address long-term concerns about prison overcrowding; and

WHEREAS, it is incumbent upon policymakers to find solutions to address the immediate problem of imminent prison overcrowding; and

WHEREAS, other states, including New Jersey, Arizona and Oregon, have devised alternative housing arrangements including, but not necessarily limited to, tents and trailers; and

WHEREAS, the employment of similar alternatives in Delaware could go a long way toward relieving the potential for overcrowding.

NOW, THEREFORE:

BE IT RESOLVED by the Senate and the House of Representatives of the 138th General Assembly of the State of Delaware, with the approval of the Governor, that the Department of Correction is hereby directed to develop rules and regulations providing for alternative methods for housing prisoners.

BE IT FURTHER RESOLVED that the Department of Correction present its proposed rules and regulations to the Delaware General Assembly and to the Governor no later than February 15, 1997.

BE IT FURTHER RESOLVED that, upon passage of this Resolution, a suitable copy be presented to the Commissioner of the Department of Correction.

Approved July 9, 1996

## CHAPTER 613

## FORMERLY

## SENATE CONCURRENT RESOLUTION NO. 37

RESPECTFULLY REQUESTING THAT THE ENVIRONMENTAL PROTECTION AGENCY CONDUCT RESEARCH TO DETERMINE THE CAUSES BEHIND DELAWARE'S HIGH CANCER RATE.

WHEREAS, a recent news report once again confirms that Delaware ranks proportionately as one of the highest states in the union in cancer rates and cancer deaths; and

WHEREAS, the Governor's Task Force on Cancer reports that Delaware had the highest cancer death rate in the country between 1985 and 1989, and other studies consistently place Delaware at or near the top of the cancer death rate statistics; and

WHEREAS, while the Governor's Task Force on Cancer speculates that one of the reasons for Delaware's disproportionately-high cancer rate and cancer death rate is such high-risk behavior as smoking, there is little empirical evidence to support arguments that Delawareans engage in such behaviors to any greater extent than in states with lower cancer rates and cancer death rates; and

WHEREAS, although the Governor's Task Force on Cancer does not identify any causal links between industrial pollution and the state's high cancer rate, the Task Force admits that there has been a lack of consistent monitoring, accurate data, and adequate study on the role that the environment and industrial pollution plays in cancer, and the study states that "ongoing and future studies must continue to be done"; and

WHEREAS, the efforts of those in Delaware who are attempting to research this intractable problem are admirable, assistance from those with greater expertise in identifying environmental links to Delaware's high cancer rate is needed to resolve once and for all lingering questions concerning causal links between industrial pollution and cancer.

## NOW THEREFORE:

BE IT RESOLVED by the Senate of the 138th General Assembly of the State of Delaware, the House of Representatives thereof concurring therein, that we hereby request the assistance of the United States Environmental Protection Agency in seeking to determine whether there are environmental factors impacting upon Delaware's high cancer rate and high cancer death rate.

BE IT FURTHER RESOLVED that, upon receipt of this Resolution, Carol Browner, Director of the United States Environmental Protection Agency, is respectfully requested to have the appropriate EPA designee contact the offices of the Majority Leader of the Delaware State Senate and the Speaker of the House of Representatives and the respective chairs of the Senate and House Natural Resources Committees to best determine the most effective means by which the EPA can provide their assistance.

BE IT FURTHER RESOLVED that, upon passage, a suitable copy of this Resolution be forwarded to Carol Browner, Director of the United States Environmental Protection Agency, and the members of Delaware's congressional delegation.

## CHAPTER 614

## FORMERLY

SENATE CONCURRENT RESOLUTION NO. 40  
AS AMENDED BY HOUSE AMENDMENT NO. 1

ESTABLISHING A CANCER AND THE ENVIRONMENT LIAISON GROUP TO ASSIST THE GENERAL ASSEMBLY IN ASSURING THAT THE CANCER TASK FORCE'S STRATEGIES AND RECOMMENDATIONS ARE CARRIED OUT AND TO ADVISE THE GENERAL ASSEMBLY AS IT DEVELOPS LEGISLATION TO REDUCE INCIDENCES OF CANCER WITHIN THE FIRST STATE.

WHEREAS, a Cancer Task Force was formed by Governor Carper to answer the question of why Delaware has the highest cancer mortality rate in the nation; and

WHEREAS, the members of the Cancer Task Force cited some of the problems, proposed recommendations, and laid out strategies to aid in the reduction of cancer in Delaware; and

WHEREAS, those strategies and recommendations are perceived by some to be "in limbo"; and

WHEREAS, Delaware would benefit by having an independent cancer and the environment liaison group to assist the General Assembly in combating this unwanted national recognition.

## NOW, THEREFORE:

BE IT RESOLVED by the Senate and the House of Representatives of the 138th General Assembly of the State of Delaware, that a cancer and the environment liaison group is established to assist the General Assembly in assuring that the Cancer Task Force's strategies and recommendations are carried out and to advise the General Assembly as it develops legislation to reduce incidences of cancer within the First State.

BE IT FURTHER RESOLVED that the liaison group shall consist of the following: three members to be appointed by the President Pro Tempore of the Senate; three members to be appointed by the Speaker of the House; The Chairs of the Senate Health and Social Services/Aging and Natural Resources and Environmental Control Committees; and The Chairs of the House Health and Human Development and Environmental Management Committees.

BE IT FURTHER RESOLVED that the appointments of the Pro Tem and Speaker are to be made from members of the medical and business communities, civic groups and environmental organizations such as the Medical Society of Delaware, the Delaware Chapter of the American Cancer Society and the Delaware Chapter of the Sierra Club.

BE IT FURTHER RESOLVED that the Chair of the liaison group shall be elected by majority vote of the members thereof; shall serve for one year; and may be re-elected; however, the Senate Chair of the Natural Resources and Environmental Control Committee shall Chair the liaison group in order to call it to its initial meeting.

BE IT FURTHER RESOLVED that should any appointed member resign, the appointing authority shall appoint another to take that member's place.

## CHAPTER 615

## FORMERLY

## SENATE CONCURRENT RESOLUTION NO. 75

## CREATING A TASK FORCE TO CONDUCT A STUDY AND MAKE RECOMMENDATIONS CONCERNING DELAWARE'S JUVENILE JUSTICE SYSTEM.

WHEREAS, in recent years, Delaware policymakers have toughened laws on violent juvenile offenders by making it easier to try cases in Superior Court and by lowering the age for juveniles to be tried in Superior Court for violent crimes; and

WHEREAS, there has been a concurrent increase in the number of juveniles incarcerated in both juvenile detention facilities and in adult correctional facilities in recent years, which mirrors a nationwide trend; and

WHEREAS, while it is often taken for granted by policymakers that getting tougher and harsher on violent youthful offenders will be a more effective way of addressing juvenile crime than emphasizing rehabilitation efforts, it is important to develop empirical evidence to determine what methodologies are indeed most effective and least cost-prohibitive; and

WHEREAS, there are some preliminary studies that suggest that there may be less recidivism among violent juvenile offenders tried in the juvenile court system as opposed to the criminal court system; and

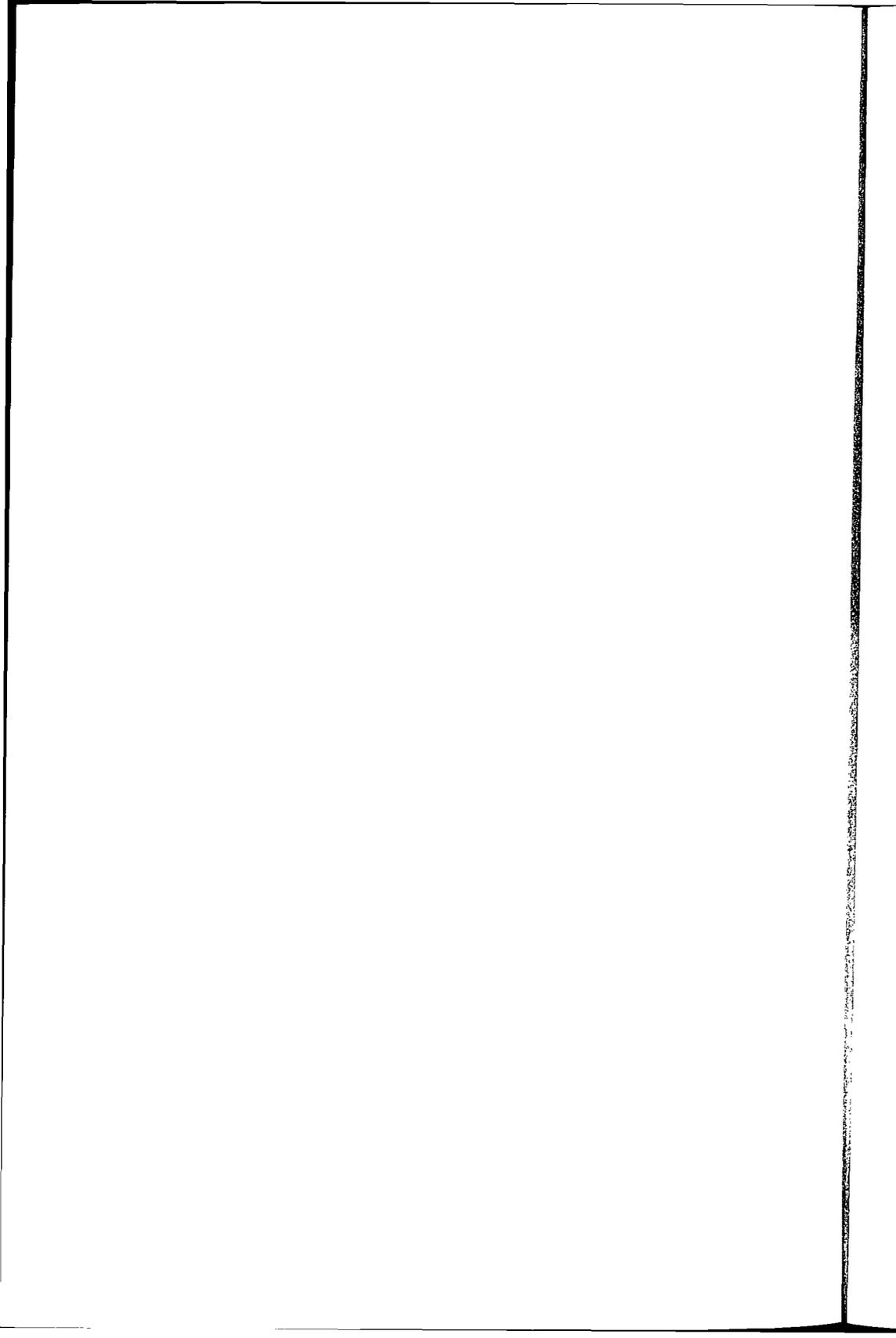
WHEREAS, the General Assembly would benefit from an investigation into the efficacy of Delaware's juvenile justice statutes which would also include comparisons and contrasts with other states, cost-benefits analysis, and input from leading experts and policymakers.

## NOW, THEREFORE:

BE IT RESOLVED by the Senate of the 138th General Assembly of the State of Delaware, the House of Representatives thereof concurring therein, that a task force is hereby created to conduct a study and make recommendations to the Delaware General Assembly concerning Delaware's juvenile justice system.

BE IT FURTHER RESOLVED that the Task Force shall consist of the following members: the Presiding Judge of Family Court or his designee; the Presiding Judge of Superior Court or his designee; the Attorney General of the State of Delaware or her designee; the Director of the Division of Youth Rehabilitative Services or his designee; the chair of the Senate Committee on Children, Youth & Families; the chair of the House Health & Human Development Committee; one member of the Delaware State Senate to be appointed by the President Pro Tempore; one member of the House of Representatives to be appointed by the Speaker of the House; the Chair of the Juvenile Justice Advisory Board or her designee; and two public members with a demonstrated interest in juvenile justice concerns, one each to be appointed by the President Pro Tempore and the Speaker of the House respectively.

BE IT FURTHER RESOLVED that said Task Force will report its findings to the Delaware General Assembly by March 31, 1997.



# INDEX

## acts causing death

murder by abuse or neglect, Chapter 266

recklessly causing the death of a child, Chapter 382

## adjudication of Family Court proceedings

drivers' licenses, Chapter 445

House Arrest, Chapter 13

## Administration of Personal Income Tax

extension of tax tables from \$40,000 to \$60,000, Chapter 454

reduction of Personal Income Tax from 7 1% to 6.9%, Chapter 455

## administration of decedents' estates

accounting and distribution, Chapters 114 & 139

inheritance tax returns, Chapter 71

## adult corrections

discipline and medical care, Chapter 67

furloughs, Chapter 410

## AGRICULTURE

agricultural preservation districts, Chapter 51

conservation, Chapter 177

dealers in agricultural products, Chapter 282

Department of Agriculture, Chapters 109 & 570

horse racing, Chapters 131, 554 & 555

noxious weed control, Chapter 285

nurseries and nursery stock, Chapter 332

plant pests, Chapter 325

regulatory provisions, Chapter 399

special farm vehicle registration, Chapter 2

agricultural and soil conservation

drainage of lands, Chapter 246

erosion and sedimentation control, Chapter 177

Alcoholic Beverage Control Commission

granting of supplier's license, Chapter 408

voluntary assessments for violation of Commission rules, Chapter 93

#### **ALCOHOLIC LIQUOR LICENSES AND TAXES**

purchase and sale of alcoholic liquors, Chapters 353 & 469

manufacture and importation of alcoholic liquor, Chapter 408

taxes, Chapter 488

transfer of license, Chapter 559

#### **ALCOHOLIC LIQUORS**

criminal offenses and penalties, Chapters 93, 123 & 132

licenses and taxes, Chapters 353, 408 & 469

regulatory provisions, Chapters 248 & 407

Responsible Alcoholic Beverage Server Training Program, Chapter 602

spirits and wine, Chapter 353

alternative educational services for disruptive students

establishment of a school code of conduct, Chapter 578

school and district-level components, Chapter 231

assaults and related offenses

assault in the second degree, Chapter 128

murder by abuse or neglect, Chapter 266

Annual Appropriations Act (1997), Chapter 425

Annual Appropriations Act (1995)

equipment for the monitoring of adjudicated juveniles, Chapter 14

Office of School Criminal Offense Ombudsman, Chapter 249

#### **ANNUAL APPROPRIATIONS ACTS**

fiscal year 1995, Chapter 14

fiscal year 1996, Chapter 118

fiscal year 1997, Chapter 473

arrest and commitment

arrest without warrant, Chapter 437

Capitol Police, Chapter 465

Artisans' Savings Bank, Chapter 337

assaults and related offenses

assault in the second degree, Chapter 128

terroristic threatening, Chapter 266

Balick, Dana, Chapter 25

#### **BANKS AND BANKING**

banks and trust companies, Chapters 336, 359 & 486

corporations, Chapter 112

decedents and decedents' estates, Chapter 327

mortgage loan brokers, Chapter 356

#### **BANKS AND TRUST COMPANIES**

Edge Act Corporations, Chapter 16

pre-need funeral contracts, Chapter 310

regulations covering the business of banks, Chapter 217

State Bank Commissioner, Chapter 6  
taxation, Chapter 486

## **BEACH PRESERVATION**

building lines, Chapter 380  
replenishing the eroding beaches along Delaware's coastline, Chapter 606  
required permits, Chapter 398

Berman, Andrew M., Chapter 301

Bethany Beach, Town of, Chapter 557

Bingham, Elizabeth, Chapter 7

Blades, Town of, Chapter 207

Board of Clinical Social Work Examiners, Chapter 143

Board of Examiners of Psychologists, Chapter 57

Board of Chiropractic

hearings and procedures, Chapter 135  
purpose and objectives of the Board, Chapter 514

Board of Landscape Architecture, Chapter 309

Board of Massage and Bodywork

Committee on Massage Practitioners, Chapter 404  
massage practice act, Chapter 582

Board of Medical Practice, Chapter 144

**BOND AND CAPITAL IMPROVEMENTS ACT (1996).**

Original Act, Chapter 210

Redding - House Study project, Chapter 300

State Fire Commission, Chapter 308

suburban streets program, Chapter 290

boot camps

Boot Camp Incarceration Act, Chapter 244

Boot Camp Study Committee, Chapter 607

Bridgeville, Town of, Chapter 348

"Brownfield" bills

"blue collar" tax credits, Chapter 219

cleanup of contaminated commercial and industrial sites, Chapter 218

**BUDGET, FISCAL AND PROCUREMENT REGULATIONS**

bids, Chapter 94

governmental accountability, Chapter 492

procurement of material and award of contracts, Chapters 82, 162 & 601

wage provisions in public contracts, Chapter 99

building and plumbing codes

County and municipal building codes, Chapters 72, 539

elevators, Chapter 578

Bullard, Megan, Chapter 32

**BUSINESS TAX CREDITS AND DEDUCTIONS**

qualified investment in business facilities, Chapter 219

tax credit and license fee reduction, Chapter 487

Cannatelli, Joseph, Chapter 32

Carello, Frank J., Chapter 152

### **CHILD WELFARE**

Child Death Review Commission, Chapter 256

dependent or neglected children, Chapter 381

regulation of non-resident children, Chapter 223

Christina School District, Chapter 304

Chung, Wendy K., Chapter 189

### **City Charters**

New Castle, Chapters 130 & 441

Rehoboth Beach, Chapters 127 & 174

### **classification of criminal offenses**

classification of felonies, Chapter 477

punishment and determination of punishment, Chapters 33 & 137

### **COMMERCE AND TRADE**

auto repair fraud prevention, Chapter 428

building construction payments, Chapter 420

commercial development, Chapter 560

crimes against commercial properties, Chapter 478

domestic limited partnerships, Chapter 78

home construction and improvement protection, Chapter 419

limited liability companies, Chapters 75 & 360

limited liability partnerships, Chapter 76

limited partnerships, Chapter 362

motor vehicle franchising practices, Chapter 497

new home buyers' protection act. Chapter 355  
partnerships. Chapter 361  
prohibited trade practices. Chapters 450 & 584  
regulation of home builder practices, Chapter 608  
Uniform Commercial Code. Chapters 86 & 439  
voluntary alternative dispute resolution. Chapter 151  
weights and measures. Chapters 284 & 370  
welfare. Chapter 350

commercial food fishing licenses

Department of Natural Resources and Environmental Control. Chapter 56  
fishing with hook-and-line. Chapter 496

Commission on Veterans' Affairs, Chapter 594

commodity taxes

Motor Fuel Tax. Chapter 311  
Public Utilities Taxes. Chapters 120, 485 & 507

comprehensive school discipline improvement program

prevention component. Chapter 213  
school and district-level component. Chapters 214 & 518

**CONSERVATION**

agricultural and soil conservation. Chapters 177 & 246  
counties. Chapter 149  
crimes and criminal procedure. Chapter 104  
environmental control. Chapter 53  
game and wildlife. Chapters 55, 56 & 275  
hazardous substance clean-ups. Chapter 218  
natural resources. Chapter 171, 239 & 240  
shellfish. Chapters 216 & 588

## **CONSTITUTIONAL AMENDMENTS**

judiciary, Chapters 396, 447 & 563  
racially-segregated schools, Chapter 277  
State Board of Health, Chapter 115

contractors' license requirements and taxes  
license requirements, Chapter 484  
real estate developer, Chapter 401

## **CORPORATIONS**

banks and banking, Chapter 112  
counties, Chapter 587  
formation of a corporation, Chapters 79 & 349  
merger or consolidation, Chapter 299

## **COUNTIES**

corporations, Chapter 587  
county taxes, Chapters 39 & 286  
Kent County, Chapter 293  
New Castle County, Chapter 255, 270 & 493  
receivers of taxes, Chapter 42  
Sussex County, Chapter 44  
transportation, Chapter 575

## **COUNTY GOVERNMENTS**

County Executive of New Castle County, Chapter 493  
government of Kent County, Chapter 293  
New Castle County Council, Chapters 568 & 569

### **County taxes**

limitations upon taxing power, Chapter 39  
valuation and assessment of property, Chapters 286 & 586

Court of Common Pleas, Chapter 89

## **COURTS AND CIVIL PROCEDURE**

Commission on Delaware Courts: 2000, Chapter 611  
court officers and employees, Chapters 221 & 232  
creation of new Constitutional Courts, Chapter 563  
crimes and criminal procedure, Chapters 448, 449 & 596  
decedents' estates and fiduciary relationships, Chapter 288  
domestic relations, Chapter 448  
Family Court, Chapters 13, 14 & 23  
forfeiture of bond, Chapter 448  
Justices of the Peace, Chapters 22 & 481  
labor, Chapter 100  
limitation of actions, Chapter 212  
occupation and professions, Chapter 238  
organization and jurisdiction of the Courts, Chapter 526  
Orphan's Court, Chapter 563  
property, Chapter 513  
special proceedings, Chapters 354 & 479  
State government, Chapter 411

court officers and employees

constable, Chapter 232  
sheriff, Chapter 221

## **CRIMES**

alcoholic liquors, Chapters 93, 123 & 132  
conservation, Chapter 105  
courts and judicial procedure, Chapters 448 & 596  
criminal trespass and burglary, Chapter 478  
domestic relations, Chapter 448  
education, Chapter 58

offenses against public administration, Chapters 52, 54 & 372  
offenses against public health and order, Chapters 50, 60 & 112  
offenses against the person, Chapters 124, 128 & 159  
offenses involving deadly weapons and dangerous instruments, Chapters 20 &  
213  
offenses involving gambling, Chapter 421  
offenses involving property, Chapters 63, 209, 211 & 344  
offenses relating to children and incompetents, Chapters 279, 318 & 438  
State government, Chapter 525  
telephones, Chapter 383  
theft, Chapters 209 & 260

#### **CRIMINAL PROCEDURE**

arrest and commitment, Chapters 437 & 465  
classification of offenses, Chapters 33, 137 & 477  
Court of Common Pleas, Chapter 89  
courts and judicial procedure, Chapter 449  
criminal Statute of Limitations, Chapter 92  
extradition and detainers, Chapter 296  
fines and costs, Chapters 220 & 461  
insurance fraud, Chapter 422  
law-enforcement administration, Chapters 77, 170 & 374  
motor vehicles, Chapter 397  
prisons and prisoners, Chapters 67, 181 & 244  
proving and disproving criminal guilt, Chapter 463  
release of persons accused of crimes, Chapter 597  
sentencing and probation, Chapters 168 & 373  
special programs, Chapter 444  
victims of crimes, Chapters 40 & 100

criminal proceedings against a minor (as an adult)

amenability proceedings, Chapter 263  
referral to another Court, Chapter 598

"Death with Dignity" Act, Chapter 392

Debt Management Account of the State Treasury

deauthorization of a portion of the General Obligation debt. Chapter 564

purchase of securities to defease General Obligation bonds. Chapter 273

#### **DECEDENTS' ESTATES AND FIDUCIARY RELATIONS**

administration of decedents' estates, Chapters 71, 114 & 139

allocation of principal and income, Chapter 165

banks and banking, Chapter 327

courts and judicial procedure, Chapter 288

descent and distribution, Chapter 298

fiduciary relations, Chapters 83 & 548

"de-coupling bill," Chapter 524

#### **DEFINITIONS**

alcoholic cider, Chapter 559

building line, Chapter 380

credited service, Chapter 187

director, Chapter 192

employee, Chapters 15 & 466

employing unit, Chapter 229

holder, Chapter 86

spirits, Chapter 353

storage, Chapter 240

telephone, Chapter 383

weights and measures, Chapter 370

Delaware Governmental Accountability Act, Chapter 492

Delaware Technical and Community College, Chapter 41

Delaware Workers' Co-operative Act, Chapter 395

dentistry and dental hygiene

appeal panels, Chapter 406

dentistry, Chapter 400

#### **DEPARTMENT OF AGRICULTURE**

*Agricultural Lands Preservation Act*, Chapter 570

appropriations for agricultural societies, Chapter 283

powers of the Department, Chapter 109

#### **DEPARTMENT OF CORRECTION**

Boot Camp Incarceration Act, Chapter 244

Budget Appropriations Act (1995), Chapter 14

discipline and medical care, Chapters 67 & 410

mandatory screening for use of illegal drugs, Chapter 340

prisons and prisoners, Chapters 67, 181 & 410

resolutions relating to the Department, Chapters 607, 612

Department of Finance, Chapter 595

#### **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

grants-in-aid, Chapter 119

health and safety, Chapters 149, 267 & 405

powers and duties of the Department, Chapters 267, 405 & 470

State Board of Health, Chapters 149, 544

Department of Natural Resources and Environmental Control

fin-fishing in tidal waters, Chapters 55 & 56

shellfish, Chapter 588

Department of Public Safety, Chapter 379

Department of Services for Children, Youth and their Families

Advisory Council for Children, Youth and their families, Chapter 140

powers and duties of the Department, Chapter 198

Department of State, Chapter 358

#### **DEPARTMENT OF TRANSPORTATION**

Delaware Transportation Authority, Chapter 402

employee commute options, Chapters 125 & 402

public-private initiative transportation program, Chapter 280

#### **DEPARTMENTS OF GOVERNMENT**

Administrative Services, Chapter 195

Correction, Chapters 181 & 183

Health and Social Services, Chapter 140

Labor, Chapter 527

Natural Resources and Environmental Control, Chapter 74

Services for Children, Youth and their Families, Chapters 140 & 198

Deyerle, Kris, Chapter 31

Doherty, Kelle A., Chapter 160

Dewey Beach, Town of, Chapter 191

#### **DOMESTIC RELATIONS**

desertion and support, Chapter 452

divorce and annulment, Chapter 531

Domestic Violence Coordinating Council, Chapters 126 & 409

marriage, Chapters 30, 307 & 375

parents and children, Chapter 146

State government, Chapter 452

Domestic Violence Coordinating Council

fatal accident reviews, Chapter 409

membership of the Council, Chapter 126

"donated leave " Chapter 306

Donovan, Janice W Chapter 295

Douglas, Scott, Chapter 7

#### **DRIVERS' LICENSES**

license qualifications, Chapter 18

penalties, Chapter 369

persons exempt from licensing requirements, Chapter 471

refusal to submit to a chemical test, Chapter 236 & 265

rules of the road, Chapters 26 & 36

suspension and revocation of license, Chapters 37 & 416

Uniform Commercial Driver's License Act, Chapter 134

Edge Act, Chapter 16

#### **EDUCATION**

charter schools, Chapter 179

comprehensive school discipline improvement program, Chapters 214, 218 &  
518

crimes and criminal procedure, Chapter 58

discipline powers and responsibilities of superintendents, Chapter 519

exercise of First Amendment rights, Chapter 251

financial assistance for higher education, Chapter 161

fiscal provisions, Chapter 329

health and safety, Chapter 516

local school taxes, Chapter 106

powers of school officials, Chapter 312

Professional Librarian and Archivist Incentive Program, Chapter 521

public school system, Chapters 180 & 237

reorganization of school districts, Chapters 84, 227 & 491

reporting requirements for superintendents, Chapter 199

school attendance, Chapters 231 & 517

School District Enrollment Choice Program, Chapters 180 & 387

school dress codes, Chapter 69

school shared decision-making, Chapter 457

standard school construction, Chapter 366

State appropriations, Chapter 571

State Board of Education, Chapters 184, 365 & 456

State government, Chapter 111

teacher certification, Chapter 459

transportation of pupils, Chapter 59

video cameras, Chapter 377

#### **"EDUCATION REFORM"**

annual school profile reports, Chapter 458

determining a school district's "true financial position," Chapter 329

"educational impact analysis" for new regulations, Chapter 456

payment of salaries for teacher holidays, Chapter 365

satellite schools, Chapter 366

Task Force on Truancy, Chapter 609

#### **ELECTIONS**

administrative agencies, Chapter 505

election campaigns, Chapter 153

general elections, Chapters 154, 388 & 490

highway, Chapter 274

primary elections and nominations, Chapters 254 & 294

registration of voters, Chapters 188, 505 & 512

eligibility for a State pension

amount of ordinary service or disability pension, Chapter 524

increases in pensions, Chapter 525

emergency medical services systems

Director of the Program, Chapter 192

Office of Emergency Medical Services, Chapter 453

employees

Department of Correction, Chapter 15

police officers, Chapter 466

employers' coverage and assessments

compensation benefits, Chapter 10

variations from new employer rate, Chapter 110

## **EMPLOYMENT PRACTICES**

employment information, Chapter 367

Federal Immigration Reform and Control Act, Chapter 98

handicapped persons, Chapter 572

Employment Security Commission

special funds, Chapter 43

"Unemployment Compensation Commission," Chapter 152

enforcement of motor vehicle laws

motor vehicle fines payable by mail, Chapter 157

reporting of offenses to the Division of Motor Vehicles, Chapter 87

**ENVIRONMENTAL CONTROL**

- Federal Clean Air Act, Chapter 8
- hazardous substance clean-ups, Chapter 218
- power and duties of the Department, Chapter 53

**EQUIPMENT AND CONSTRUCTION OF VEHICLES**

- communication devices, Chapter 508
- equipment requirements, Chapters 85, 357
- lights, Chapter 414

exclusive original jurisdiction of Family Court

- capital offenses, Chapter 596
- proceedings relating to delinquency, Chapter 262

exemptions from Public Utilities Taxes

- automobile manufacturing, Chapter 120
- utilities delivered to State and Federal agencies, Chapter 507

**FAMILY COURT**

- constitutional amendment, Chapter 563
- jurisdiction and powers, Chapters 261, 262 & 449
- privacy, Chapter 23
- procedures, Chapters 13, 102 & 598

**FAMILY COURT JURISDICTION AND POWERS**

- delinquency, Chapter 261
- exclusive jurisdiction over motor vehicle violations, Chapter 418
- exclusive original civil jurisdiction, Chapters 262 & 596
- general jurisdiction, Chapter 449

Family Court procedures

National Driver Registration Act, Chapter 102

proceedings in the interests of a child, Chapters 13, 263, & 598

#### **FEES AND LICENSES**

contractors, Chapter 401

distribution of proceeds, Chapter 464

Insurance Premium Tax, Chapter 530

Felton, Town of, Chapter 91

fiduciary relations

guardianship, Chapter 83

treatment of Delaware business trusts, Chapter 548

finer, costs and penalties

payment of fines and costs, Chapter 461

restitution for property damage, Chapter 220

#### **FIN-FISHING IN TIDAL WATERS**

commercial food fishing license, Chapters 56 & 496

sale, trade or barter of food fish, Chapter 579

size limits on fin-fish, Chapter 55

theft and attempted theft of fishing equipment, Chapter 500

fire lanes

penalties for parking lane violations, Chapter 19

stopping, starting or parking in fire lanes, Chapter 503

formation of a corporation

certificate of incorporation, Chapter 79

execution and acknowledgment of certificate, Chapter 349

Forristal, Ron, Chapter 45

#### **FRAUDS AND CHEATS**

home improvement fraud, Chapter 63

issuing a bad check, Chapter 501

ticket scalping, Chapter 233

Frederica, Town of, Chapter 190

Fulmer, John F., Chapter 289

Gallagher, Patricia A., Chapter 35

#### **GAME, WILDLIFE AND DOGS**

dogs, Chapter 278

eel fishing, Chapter 204

fin-fishing in tidal waters, Chapters 56, 56 & 496

protected wildlife, Chapter 275

regulations concerning game and fish, Chapters 436 & 502

#### **GENERAL ELECTIONS**

conduct of elections, Chapter 388

election officers, Chapter 490

voting machines, Chapters 154, 506

Georgetown, Town of, Chapter 442

Giglio, Peter V., Chapter 295

Governor's Task Force on Cancer, Chapter 613

## GRANTS-IN-AID

original Act, Chapter 119

1997 grants-in-aid, Chapter 426

Peninsula United Methodist Homes, Chapter 291

habitual motor vehicle offenders

adjudicating a person as an habitual offender, Chapter 528

proceedings to declare person an habitual offender, Chapter 136

Hall, Stephanie L., Chapter 301

harness racing, Chapter 589

Hastings, Pamela, Chapter 292

hazardous waste management

generation and transportation of hazardous waste, Chapter 240

waste-end assessments, Chapter 324

## HEALTH

contagious diseases, Chapter 562

Department of Health and Social Services, Chapters 119, 267 & 405

education, Chapter 516

HIV-related tests, Chapter 520

hospitals and other health facilities, Chapters 17 & 446

insurance, Chapter 147

mental health, Chapter 550

paramedic and other emergency systems, Chapters 192, 341 & 453

public utilities, Chapter 49

sanatoria and rest homes, Chapter 222

State and local boards of health, Chapters 149, 267 & 392

Uniform Controlled Substances Act, Chapters 80 & 81

vital statistics, Chapters 378 & 391

#### **HENLOPEN ACRES, TOWN OF**

collection of unpaid taxes, Chapter 347

long-term borrowing powers, Chapter 345

town clerk, Chapter 346

Herdman, Paul, Chapter 25

Hickman, Andrew M., Chapter 64

#### **HIGHWAYS**

acquisition and sale of real property, Chapter 166

communications, Chapter 228

corridor routes, Chapter 523

Delaware Interstate Highway Division, Chapter 468

Department of Transportation, Chapter 257

elections, Chapter 274

highways and roads, Chapter 599

Interstate Highway Division, Chapter 269

#### horse racing

license to conduct racing meets, Chapters 131 & 554

Thoroughbred Racing Commission, Chapter 555

#### hospitals and other health facilities

activities subject to review, Chapter 17

health planning and resources management, Chapter 446

#### **HOUSE RESOLUTIONS APPEARING IN THIS VOLUME**

creation of the Task Force on Prison Facilities, Chapter 604

establishment of Athletic Commission Study Committee, Chapter 605

establishment of the Boot Camp Study Committee, Chapter 607

establishment of the Legislative Committee on Personnel Practices, Chapter 610

establishment of the Task Force on Truancy, Chapter 609

Task Force to identify approaches for replenishing Delaware's coastline, Chapter 606

Task Force to review Home Builder Practices, Chapter 608

Hunter, Jeffrey E., Chapter 189

imposition of Personal Income Tax

administration and enforcement of tax, Chapters 117 & 455

separate tax on lump-sum distributions, Chapter 454

incapacity related to Worker's Compensation

minimum duration of incapacity, Chapter 205

permanent injury related to hearing or vision, Chapter 532

#### **INCOME, INHERITANCE AND ESTATE TAXES**

business tax credits and deductions, Chapters 219 & 487

gift tax, Chapter 368

inheritance tax, Chapter 70

Personal Income Tax, Chapters 116, 117 & 142

income tax on non-resident individuals

itemized deductions, Chapter 297

taxable income, Chapter 142

#### **INCOME TAX ON RESIDENT INDIVIDUALS**

itemized deductions, Chapter 483

modifications, Chapter 495

personal exemptions, Chapter 116

Indian River Board of Education, Chapter 84

Indian River School District, Chapter 331

#### **INDUSTRIAL ACCIDENT BOARD**

compensation and travel expenses of the Board, Chapter 315

determination and payment of benefits, Chapter 534

receipts and disbursements, Chapter 129

#### **INSURANCE**

agents and brokers, Chapter 424

authorization of insurers, Chapter 376

captive insurance companies, Chapter 107

casualty insurance contracts, Chapter 583

Consumer Credit Insurance Act, Chapter 576

Delaware Life and Health Insurance Guaranty Association Act, Chapter 547

fees and taxes, Chapters 464 & 530

fraternal benefit societies, Chapter 533

group and blanket health insurance, Chapter 104

health and safety, Chapter 147

health care malpractice insurance, Chapter 415

health insurance contracts, Chapter 537

HIV testing, Chapter 176

Insurance Commissioner, Chapters 173 & 185

insurance contracts, Chapter 155

investments, Chapters 108 & 494

labor, Chapter 172

long-term care insurance, Chapter 351

Medicare supplemental insurance minimum standards, Chapter 156

rates and rating organizations, Chapter 122

rehabilitation and liquidation, Chapter 195

risk-based capital for insurers, Chapter 234

unfair practices in the insurance business, Chapters 250 & 510

worker's compensation ratings, Chapter 573

workmen's compensation self-insurance groups, Chapter 540

#### **INSURANCE COMMISSIONER**

arbitration of disputes involving coverage, Chapter 194

arbitration of disputes involving homeowners' claims, Chapter 173

election and term, Chapter 185

investments by insurers

diversification, Chapter 494

eligible investments, Chapter 108

#### **JUDICIARY**

creation of two new Constitutional Courts, Chapter 563

jurisdiction of the Supreme Court, Chapter 396

Justices of the Peace, Chapters 22 & 447

Prothonotary, Chapter 593

jurisdictions of Delaware Courts

Court of Common Pleas, Chapter 89

Family Court, Chapters 261, 449 & 596

Justices of the Peace

appeals by the State in criminal cases, Chapter 481

organization and operation, Chapter 22

#### **LABOR**

courts and judicial procedure, Chapter 100

employment practices, Chapters 98 & 367

health and safety, Chapter 460

insurance, Chapter 172

minimum wage, Chapters 15, 319

Police Officer's Employment Relations Act, Chapters 163, 466 & 498

State government, Chapter 242

unemployment compensation, Chapters 43, 46 & 97

wage payment and collection, Chapter 103

worker's compensation, Chapters 95, 96 & 12

Lake Forest Board of Education, Chapter 335

Laurel, Town of, Chapter 385

#### **LAW-ENFORCEMENT ADMINISTRATION**

county and municipal police, Chapter 389

law-enforcement officer's "bill of rights," Chapter 467

State Bureau of Identification, Chapters 170 & 577

State Police, Chapters 77 & 374

laws regulating the conduct of public officers and employees

Code of Conduct for State officers and employees, Chapter 567

leave regulation for certain exempt positions, Chapter 314

Ledeboer, Paul, Chapter 302

Lewes, Town of, Chapter 440

license plates for members of non-profit organizations

Delaware Nur Temple, Chapter 12

Order of the Eastern Star, Chapter 158

licenses to conduct racing meets

license to participate in racing, Chapter 555

Thoroughbred Racing Commission, Chapter 131

limited liability companies

certificate of formation, Chapter 75

formation of company, Chapter 360

Lipstein, Allen J. Chapter 226

marriage

production of marriage license, Chapter 30

solemnization of marriage, Chapter 307

void and voidable marriages, Chapter 375

Mary Campbell Center, Chapter 17

Mazer, David, Chapter 32

McCall, Michael F., Chapter 29

McCandlish, Terry L., Chapter 35

Medical Practices Act

professional regulations, Chapter 144

respiratory care practitioners, Chapter 203

#### **MERIT SYSTEM OF PERSONNEL ADMINISTRATION**

donated leave program, Chapter 306

enforcement and appeals, Chapter 509

leave regulations for certain exempt positions, Chapter 314

Legislative Committee on Personnel Practices, Chapter 610

Merit System rules, Chapters 271, 272 & 541

## **MERIT SYSTEM RULES**

classification and uniformity, Chapter 271

eligibility lists, Chapter 272

grievances, Chapter 541

Mersino, Shellie, Chapter 45

Middletown, Town of, Chapter 10

military and civil defense, Chapter 413

Millsboro, Town of

assessment of taxes, Chapter 73

nominations for Town Councilman, Chapter 443

minimum wage

exclusions from minimum wage, Chapter 15

minimum wage rate, Chapter 319

## **MORTGAGES AND OTHER PROPERTY LIENS**

mortgages on real estate, Chapters 253 & 543

instruments securing optional future advances, Chapter 254

liens and estate recoveries, Chapter 545

unit properties, Chapter 178

mortgages on real estate

instruments transferring interests in leases or rents, Chapter 253

satisfaction of mortgages, Chapter 543

motor vehicle liens

penalties, Chapter 542

terminal rental adjustment clauses, Chapter 433

## **MOTOR VEHICLE PLATES**

Department of Public Safety, Chapter 511  
display of number plates, Chapter 320  
environmental license plates, Chapter 281  
medals or commendations for valor, Chapter 24  
number and registration plates, Chapter 264  
number plates for manufacturers and dealers, Chapter 580  
special animal welfare license plates, Chapter 476  
special license plates for retired military personnel, Chapter 200  
special license plates for veterans, Chapters 9 & 323  
special registration plates for members of non-profit organizations,  
Chapters 12, 158 & 317

## **MOTOR VEHICLE REGISTRATION, TITLE AND LICENSES**

drivers' licenses, Chapters 18, 34 & 134  
habitual offenders, Chapters 136 & 528  
inspection of motor vehicles, Chapter 28  
plates, Chapter 2, 9 & 12  
registration of vehicles, Chapters 47, 88 & 339  
special form vehicle registration, Chapter 24  
temporary registration permits, Chapter 202  
title and liens, Chapters 433 & 542  
transfer of title and registration, Chapter 429

## **MOTOR VEHICLES**

crimes and criminal procedure, Chapter 397  
drivers' licenses, Chapters 18, 26 & 37  
enforcement of motor vehicle laws, Chapters 87 & 157  
fire lanes, Chapter 19  
operation and equipment, Chapters 34, 36 & 38  
registration, title and licenses, Chapters 2, 9 & 12

motor vehicle sizes and weights

vehicles on interstate highways, Chapter 169

vehicles on roads other than interstate highways, Chapter 259

## **NATURAL RESOURCES**

beach preservation, Chapters 380, 398

Delaware Underground Storage Tank Act, Chapter 241

Extremely Hazardous Substances Risk Management Act, Chapter 239

Hazardous waste management, Chapters 240, 324

inland bays watershed enhancement program, Chapter 313

Waste Minimization Prevention Act, Chapter 499

water utilities, Chapter 171

## **NAVIGATION AND WATERS**

boating safety, Chapter 268

operation of vessel under the influence of intoxicating liquor, Chapter 565

pilotage rates, Chapter 11

New Castle, City of

municipal elections, Chapter 441

water and light commissioners, Chapter 130

## **NEW CASTLE COUNTY**

County Executive and county government, Chapters 493 & 568

subdivision and land development, Chapter 270

zoning, Chapter 255

New Castle County Council

number of members, Chapter 568

terms of members, Chapter 569

## **MOTOR VEHICLE PLATES**

Department of Public Safety, Chapter 511  
display of number plates, Chapter 320  
environmental license plates, Chapter 281  
medals or commendations for valor, Chapter 24  
number and registration plates, Chapter 264  
number plates for manufacturers and dealers, Chapter 580  
special animal welfare license plates, Chapter 476  
special license plates for retired military personnel, Chapter 200  
special license plates for veterans, Chapters 9 & 323  
special registration plates for members of non-profit organizations,  
Chapters 12, 158 & 317

## **MOTOR VEHICLE REGISTRATION, TITLE AND LICENSES**

drivers' licenses, Chapters 18, 34 & 134  
habitual offenders, Chapters 136 & 528  
inspection of motor vehicles, Chapter 28  
plates, Chapter 2, 9 & 12  
registration of vehicles, Chapters 47, 88 & 339  
special form vehicle registration, Chapter 24  
temporary registration permits, Chapter 202  
title and liens, Chapters 433 & 542  
transfer of title and registration, Chapter 429

## **MOTOR VEHICLES**

crimes and criminal procedure, Chapter 397  
drivers' licenses, Chapters 18, 26 & 37  
enforcement of motor vehicle laws, Chapters 87 & 157  
fire lanes, Chapter 19  
operation and equipment, Chapters 34, 36 & 38  
registration, title and licenses, Chapters 2, 9 & 12

motor vehicle sizes and weights

vehicles on interstate highways, Chapter 169

vehicles on roads other than interstate highways, Chapter 259

## **NATURAL RESOURCES**

beach preservation, Chapters 380, 398

Delaware Underground Storage Tank Act, Chapter 241

Extremely Hazardous Substances Risk Management Act, Chapter 239

Hazardous waste management, Chapters 240, 324

inland bays watershed enhancement program, Chapter 313

Waste Minimization Prevention Act, Chapter 499

water utilities, Chapter 171

## **NAVIGATION AND WATERS**

boating safety, Chapter 268

operation of vessel under the influence of intoxicating liquor, Chapter 565

pilotage rates, Chapter 11

## **New Castle, City of**

municipal elections, Chapter 441

water and light commissioners, Chapter 130

## **NEW CASTLE COUNTY**

County Executive and county government, Chapters 493 & 568

subdivision and land development, Chapter 270

zoning, Chapter 255

## **New Castle County Council**

number of members, Chapter 568

terms of members, Chapter 569

Newport, Town of

alderman, Chapter 321

geographic boundaries, Chapter 4

number and registration plates

special license plates, Chapter 264

vanity license plates, Chapter 326

#### **OCCUPATIONAL AND BUSINESS LICENSES AND TAXES**

contractor's license requirements, Chapters 401 & 484

gross receipts tax, Chapter 489

retail and wholesale merchants' requirements, Chapter 230

#### **OCCUPATIONS AND PROFESSIONS**

chiropractic, Chapters 135 & 514

cosmetology and barbering, Chapter 430

counseling, Chapter 535

courts and judicial procedure, Chapter 238

dentistry and dental hygiene, Chapters 400 & 406

landscape architecture, Chapter 309

massage, Chapter 404

medicine, Chapters 144 & 203

nursing, Chapter 482

optometrists, Chapter 546

private detectives, Chapter 591

real estate sales, Chapter 603

psychology, Chapter 57

social work, Chapter 143

Ocean View, Town of, Chapter 225

## **OFFENSES AGAINST PUBLIC ADMINISTRATION**

obstruction of governmental operations, Chapters 52, 54 & 412  
offenses relating to judicial proceedings, Chapter 480  
perjury and related offenses, Chapter 372

## **OFFENSES AGAINST PUBLIC HEALTH, ORDER AND DECENCY**

hate crimes, Chapter 138  
loitering, Chapter 112  
offenses involving deadly weapons, Chapter 343  
riot and disorderly conduct, Chapters 50, 60 & 112

## **OFFENSES AGAINST THE PERSON**

acts causing death, Chapters 266 & 382  
assaults and related offenses, Chapter 128 & 330  
dangerous crime against a child, Chapter 124  
menacing, Chapter 159  
sexual offenses, Chapter 600

offenses involving deadly weapons and dangerous instruments

criminal history record-checks, Chapter 20  
possession of a weapon in a "safe school," Chapter 213

## **OFFENSES INVOLVING OBSTRUCTION OF GOVERNMENTAL OPERATIONS**

falsely reporting an incident, Chapter 412  
hindering prosecution, Chapter 52  
offenses against law-enforcement animals, Chapter 54  
threats to public officials, Chapter 551

## **OFFENSES INVOLVING PROPERTY**

arson and related offenses, Chapter 344  
criminal trespass and burglary, Chapter 478  
frauds and cheats, Chapters 63, 233 & 501  
pecuniary loss, Chapter 211

recording devices, Chapter 449

theft and related offenses, Chapters 209, 260 & 364

#### **OFFENSES RELATING TO ALCOHOLIC LIQUORS**

A.B.C. Licensees who plead guilty, Chapter 93

offenses concerning certain persons, Chapters 123 & 558

penalties against certain licensees, Chapter 132

#### **OFFENSES RELATING TO CHILDREN AND INCOMPETENTS**

alcoholic liquors, Chapters 123 & 558

criminal non-support, Chapter 448

endangering the welfare of a child, Chapter 451

female genital mutilation, Chapter 438

sale and distribution of tobacco products, Chapter 318

sexual offenders, Chapter 279

#### **OPERATION AND EQUIPMENT OF MOTOR VEHICLES**

drivers' licenses, Chapters 26, 34 & 36

equipment and construction of vehicles, Chapters 85, 357 & 414

motor carrier safety, Chapter 87

reports of accidents, Chapter 258

rules of the road, Chapters, 62, 38 & 208

size and weight of vehicles, Chapters 169 & 259

operation of bicycles and other human-powered vehicles

helmet requirements, Chapter 38

mopeds and tripedes, Chapter 208

Owens, Jack F., Chapter 41

paramedic and other emergency medical service systems  
    emergency medical services systems, Chapters 192 & 453  
    paramedic services, Chapter 341

Patton, Laurie, Chapter 226

#### **PAYMENTS FOR INJURY OR DEATH UNDER WORKMAN'S COMPENSATION**

    benefits adjustments, Chapter 201  
    burial expenses where injury results in death, Chapter 141  
    minimum duration of incapacity, Chapters 205 & 532

#### **PERSONAL INCOME TAX**

    imposition and rate of tax, Chapters 117 & 454  
    non-resident individuals, Chapters 142 & 297  
    resident individuals, Chapters 116, 483 & 495  
    withholding of tax, Chapters 371, 472

Peyton, Elizabeth A., Chapter 189

#### **POLICE OFFICER'S AND FIREFIGHTER'S EMPLOYMENT RELATIONS ACT**

    employee rights, Chapter 163  
    employees, Chapter 466  
    Volunteer Firefighter and Rescue Squad Worker Act, Chapter 498

primary elections and nomination of candidates  
    presidential primary elections, Chapter 294  
    primary elections, Chapter 245

prisons and prisoners  
    boot camp intensive incarceration, Chapter 244  
    Department of Correction, Chapters 67, 181 & 410

proceedings in the interests of a child

adjudication of proceedings involving a child, Chapters 13 & 445

proceeding against a child as an adult, Chapters 263 & 598

prohibited trade practices

charitable and fraternal solicitation, Chapter 584

home food service plan sales, Chapter 450

## **PROPERTY**

personal property, Chapter 240

real property, Chapters 178, 252 & 513

rule against perpetuities, Chapter 538

## **PUBLIC OFFICERS AND EMPLOYEES**

health care insurance, Chapter 61

laws regulating the conduct of officers and employees, Chapters 309 & 567

Legislative Committee on Personnel Practices, Chapter 610

Merit System of Personnel Administration, Chapters 2, 71, 272 & 306

State Employees' Pension Plan, Chapters 187 & 524

Braille literacy rights, Chapter 237

## **PUBLIC SCHOOL SYSTEM**

annual school profile reports, Chapter 458

school district enrollment choice program, Chapter 180

legislative educational impact statements, Chapter 456

reorganization of school districts, Chapters 227 & 365

school district enrollment choice program, Chapter 180

## **PUBLIC SERVICE COMMISSION**

jurisdiction and powers, Chapter 133

public notice, Chapter 585

Telecommunication Technology Investment Act, Chapter 556

## **PUBLIC UTILITIES**

health and safety, Chapter 48

Public Service Commission, Chapters 133 7 556

regulation of cable television systems, Chapter 47

### **Public Utilities Taxes**

exemptions, Chapters 120 & 507

imposition of tax, Chapter 485

### **purchase and sale of alcoholic liquors**

beer and wine tasting, Chapter 353

licenses for brewer-pubs, Chapter 469

## **REAL PROPERTY**

arson, Chapter 344

deeds, Chapter 252

mortgages and other liens, Chapters 178, 253 & 254

Red Clay School District, Chapter 334

## **RECKLESS DRIVING AND DRIVING WHILE INTOXICATED**

driving while intoxicated, Chapter 34

ignition interlock devices, Chapter 553

reckless driving, Chapter 474

### **refusal to submit to a chemical test**

consent to submit to a chemical test, Chapter 236

rules of the road, Chapter 265

### **Rehoboth Beach, City of**

general obligation bonds, Chapter 174

violations of city ordinances, Chapter 127

registration of election books and supplies

confidentiality of addresses, Chapter 512

election district records, Chapter 505

#### **REGISTRATION OF MOTOR VEHICLES**

period of registration, Chapter 88

registration of heavy vehicles, Chapter 339

requirement of insurance for all motor vehicles, Chapter 47

registration of voters

permanent registration system, Chapter 188

registration books and supplies, Chapters 505 & 512

regulation of alcoholic liquors

prohibitions against certain sales, Chapter 248

transportation of spirits and wines, Chapter 407

regulations concerning game and fish

prohibited hunting and trapping devices, Chapter 436

wearing of "hunter orange" required, Chapter 502

#### **REORGANIZATION OF SCHOOL DISTRICTS**

elections in reorganized school districts, Chapter 515

Indian River School District, Chapter 84

reorganized school districts, Chapter 491

school boards of reorganized school districts, Chapter 227

#### **REGULATORY PROVISIONS CONCERNING PUBLIC HEALTH**

adult day care facilities, Chapter 470

patient's right to terminate treatment, Chapter 392

persons engaged in lead-based paint activities, Chapter 536

public swimming and bathing places, Chapters 267 & 405

Residential Landlord-tenant Code, Chapter 513

#### **RESOLUTIONS RELATING TO THE DEPARTMENT OF CORRECTIONS**

alternate housing and prison overcrowding problems, Chapter 612

Boot Camp Study Committee, Chapter 607

Task Force on Prison Facilities, Chapter 601

#### **RIOT, DISORDERLY CONDUCT AND RELATED OFFENSES**

cruelty to animals, Chapter 60

loitering, Chapter 112

stalking, Chapter 316

trading in human remains and associated funerary objects, Chapter 50

Rossiter, Michael E., Chapter 189

Rule Against Perpetuities, Chapter 164

#### **RULES OF THE ROAD**

driving rules and regulations, Chapter 342

driving while intoxicated, Chapter 62

operation of bicycles and similar vehicles, Chapters 38 & 208

reckless driving, Chapters 34, 474 & 553

turning and stopping, Chapter 384

#### **SAFETY**

building and plumbing, Chapters 72, 539 & 578

radiation control, Chapter 145

"same sex marriage", Chapter 375

Sanchez, Christopher G., Chapter 160

Schiavelli, Rose A., Chapter 289

school attendance

absences and truancy, Chapters 231, 609

compulsory attendance requirements, Chapter 517

"school crime bills"

arrest without warrant for offenses committed on school property, Chapter 58

creation of the position of "school liaison," Chapter 249

safe school and recreation zones, Chapter 213

strengthening of school discipline, Chapter 215

School District Enrollment Choice Program

original Act, Chapter 180

pupil applications, Chapter 387

Selbyville, Town of, Chapter 592

**SENATE RESOLUTIONS APPEARING IN THIS VOLUME**

Commission on Delaware Courts: 2000, Chapter 611

directing the Department of Correction to develop rules relating to prison overcrowding, Chapter 612

requesting that research be conducted relating to cancer, Chapter 613

**SENTENCING, PROBATION AND PAROLE**

diminution of confinement, Chapter 581

parole, Chapter 168

probation and sentencing procedures, Chapter 373

shellfish

Department of natural Resources and Environmental Control, Chapter 588

transfer of commercial crabbing licenses, Chapter 216

Smyrna, Town of, Chapter 68

special appropriation bills, Chapter 432

special court proceedings

change of name, Chapter 479

habeas corpus, Chapter 354

#### **SPECIAL LICENSE PLATES FOR MEMBERS OF NON-PROFIT ORGANIZATIONS**

Delaware Nur Temple and others, Chapter 12

high school alumni associations, Chapter 333

Knights of Columbus, Chapter 9

Order of Eastern Star, Chapter 158

Telephone Pioneers of America, Chapter 417

special license plates for military personnel

disabled veterans, Chapter 9

Korean War veterans, Chapter 322

#### **SPORTS AND AMUSEMENTS**

Athletic Commission Study Committee, Chapter 605

Delaware Bicycle Council, Chapter 409

horse racing, Chapters 131 & 554

State and local boards of health

Department of Health and Social Services, Chapters 149, 267 & 405

local boards of health, Chapter 149

State Athletic Commission, Chapter 605

## STATE BOARD OF EDUCATION

composition and organization of the Board, Chapter 529

Education Science in Motion Fund, Chapter 184

powers and duties of the Board, Chapters 365, 456 & 458

public school system, Chapters 84, 180 & 365

### State Bureau of Identification

criminal background check for child care providers, Chapter 577

criminal background check for school-related employment, Chapter 170

### State Board of Health, Chapters 147 & 544

### State emblems

State herb, Chapter 386

State fossil, Chapter 427

### State Employees' Pension Plan

credited service, Chapter 187

eligibility requirements and benefits, Chapters 524 & 525

## STATE GOVERNMENT

administrative procedures, Chapter 90

budget and fiscal regulations, Chapters 82, 94 & 99

continuing Code revision, Chapter 186

Courts and civil procedure, Chapter 411

crimes and criminal procedure, Chapter 525

departments of government, Chapters 74, 140 & 148

disaster service volunteer leave, Chapter 21

domestic relations, Chapter 452

education, Chapter 111

First State Quality Improvement Fund, Chapter 338

general regulations for State agencies, Chapter 492

interpreting significant State events for the hearing impaired, Chapter 549

public offices and employees, Chapters 61, 271 & 272

Register of Regulations, Chapter 5

State offices created by the Constitution, Chapters 29, 352 & 431

State offices *not* created by the Constitution, Chapters 3 & 167

State planning and property acquisition, Chapter 522

State seal and song, Chapters 386 & 427

Transportation, Chapter 305

#### **STATE OFFICES CREATED BY THE CONSTITUTION**

Attorney-General, Chapter 431

Governor, Chapter 352

State Treasurer, Chapters 29 & 509

#### **State Police**

disability and death benefits, Chapter 77

service disability, Chapter 375

#### **STATE PROCUREMENT ACT**

complete set, Chapter 601

opening of bids, Chapter 162

wage provisions in public construction contracts, Chapter 82

#### **State Treasurer**

checks and drafts, Chapter 509

Local Government Investment Pool, Chapter 29

#### **substance abuse offenses**

prohibited acts, Chapter 80

trafficking in marijuana and cocaine, etc. Chapter 235

#### **supplementary appropriations**

purchase of books, Chapter 323

State Treasurer's debt management account, Chapters 273 & 564

suspension or revocation of drivers' licenses

discretionary suspension or revocation, Chapter 37

notice, Chapter 416

## **TAXATION**

commodity taxes, Chapters 120, 311 & 485

income and inheritance taxes, Chapters 70, 116 & 117

occupational and business taxes, Chapters 230, 401 & 484

Public Utilities Tax, Chapter 1

registration of Federal liens, Chapter 504

## **THEFT AND RELATED OFFENSES**

Class A felony, Chapter 209

devices for unlawfully taking communications devices, Chapter 475

felony and misdemeanor differentiations, Chapter 364

theft of rented property, Chapter 260

"tort reform"

regulation of certain cases before the Industrial Accident Board, Chapter 129

repeal of "50-mile radius" witness limitation, Chapter 415

## **TOWN CHARTERS**

Bethany Beach, Chapter 557

Blades, Chapter 207

Bridgeville, Chapter 348

Dewey Beach, Chapter 191

Felton, Chapter 90

Frederica, Chapter 190

Georgetown, Chapter 442

Henlopen Acres, Chapters 345, 346 & 347

Laurel, Chapter 385

Lewes, Chapter 440

Middletown, Chapter 10

Millsboro, Chapters 73 & 443

Newport, Chapters 4 & 321

Ocean View, Chapter 223

Selbyville, Chapter 592

Smyrna, Chapter 68

Townsend, Town of, Chapters 224 & 423

Wyoming, Chapter 206

Townsend, Town of

Real Estate Transfer Tax, Chapter 224

re-incorporation, Chapter 423

#### **TRANSPORTATION**

counties, Chapter 575

Department of Transportation, Chapter 280

employee commute options, Chapter 125

State government, Chapter 305

trust companies

corporation law for banks and trust companies, Chapter 336

regulations governing banks and trust companies, Chapter 359

#### **UNEMPLOYMENT BENEFITS**

determination and payment, Chapter 97

filing of claim, Chapter 121

recoupment of benefit overpayments, Chapter 566

## **UNEMPLOYMENT COMPENSATION**

compensation benefits, Chapters 97, 121 & 566  
employer's coverage and assessments, Chapters 46 & 110  
employing unit, Chapter 229  
Employment Security Commission, Chapters 43 & 152  
voluntary withholding of Federal Income Tax, Chapter 574

unfair practices in the insurance business  
domestic violence, Chapter 510  
unfair and deceptive acts or practices, Chapter 250

## **UNIFORM ACTS**

Uniform Commercial Code, Chapters 86 & 439  
Uniform Conservation Easement Act, Chapter 552  
Uniform Controlled Substance Act, Chapters 80, 81 & 235  
Uniform Federal Lien Registration Act, Chapter 504  
Uniform Fraudulent Transfer Act, Chapter 434  
Uniform Premarital Agreement Act, Chapter 462  
Uniform T.O.D. Security Registration Act, Chapter 394  
Uniform Transfers to Minors Act, Chapter 393

### **Uniform Commercial Code**

bulk transfers, Chapter 439  
sales, Chapter 86

### **Uniform Controlled Substance Act**

offenses and penalties, Chapters 80 & 235  
standards and schedules, Chapter 81

Uniform Federal Lien Registration Act, Chapter 504

Valazquez, Jose E., Chapter 302

valuation and assessment of property

criteria for land use, Chapter 286

Farmland Evaluation Advisory Committee, Chapter 586

#### **VICTIMS OF CRIMES**

compensation for victims of crime, Chapter 40

law-enforcement officers, Chapter 467

victims' Bill of Rights, Chapter 100

Village of Ardencroft, Chapter 363

vital statistics

cancer control, Chapter 391

registration of births and deaths, Chapter 391

volunteer firefighters and worker's compensation

full-time employees, Chapter 561

volunteer fire companies, Chapter 303

voting machines

electronic voting machines, Chapter 506

electronic voting systems, Chapter 154

weights, measures and standards

fees for out-of-state companies, Chapter 284

weights and measures, Chapter 370

#### **WELFARE**

Children's Trust Fund, Chapter 590

child welfare, Chapters 223, 256 & 381

Welfare Employment Act, Chapter 66

Welfare Reform Act of 1995, Chapter 65

**"welfare reform"**

revision of Medicaid, general assistance, and aid to families with dependent child, Chapter 65

directing welfare recipients into private-sector jobs, Chapter 66

**withholding of Personal Income Tax**

deposit of overpayment, Chapter 472

employer's return and payment of tax, Chapter 371

**WORKER'S COMPENSATION**

employer records and reports, Chapter 95

Industrial Accident Board, Chapters 129 & 315

payments for injuries or death, Chapters 141 & 201

volunteer firefighters as State employees, Chapters 303 & 561

wages, Chapter 96

Wyoming, Town of, Chapter 206

Zoning, Chapter 270



**END**

**OF**

**VOLUME**